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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-1031

LEONARD TONASKET,
Appellant,
v.
THE STATE OF WASHINGTON and
THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

BRIEF OF APPELLANT

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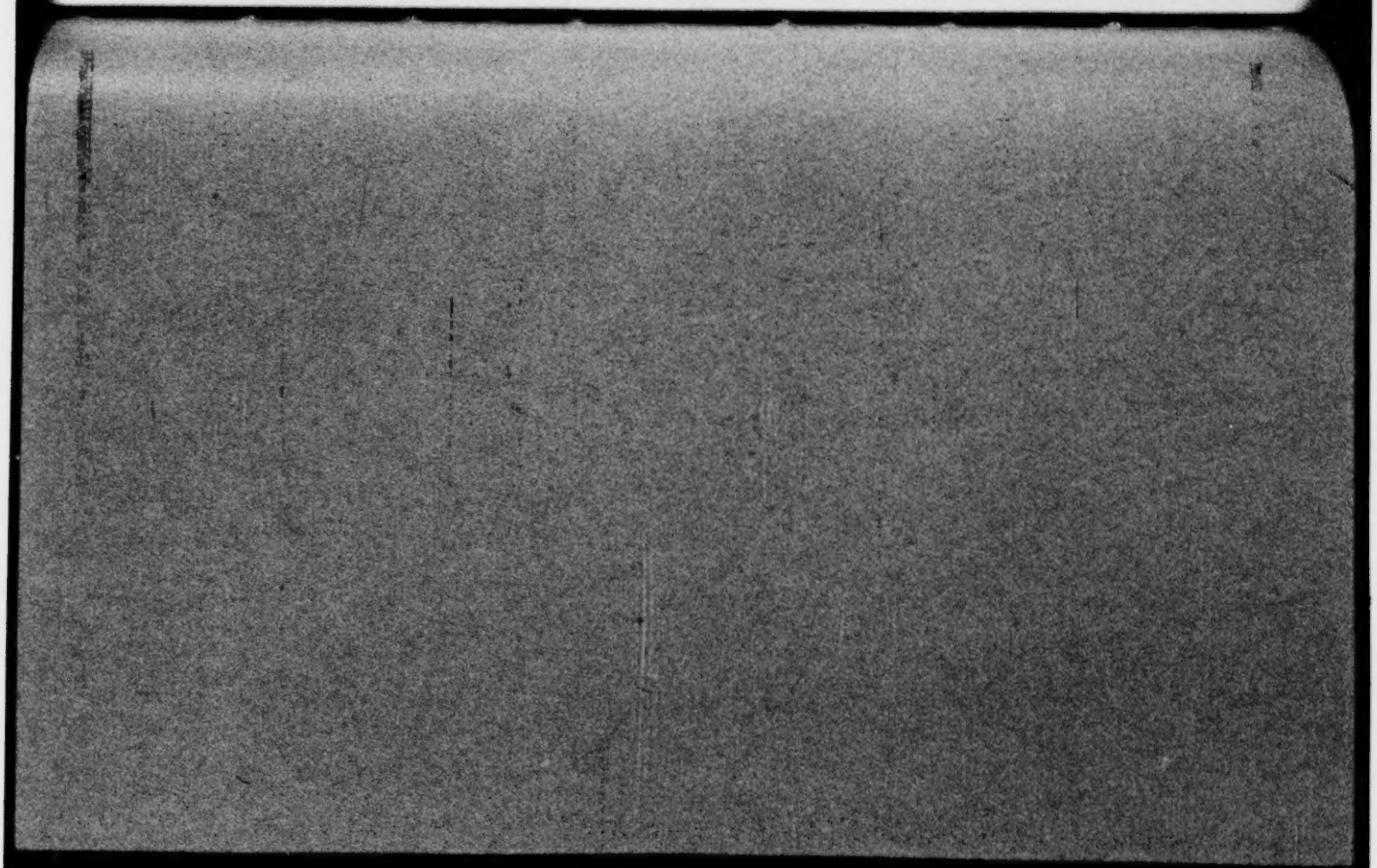

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LEONARD TONASKET,
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v.

THE STATE OF WASHINGTON and
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OF THE STATE OF WASHINGTON,
Respondents.

BRIEF OF APPELLANT

This case involves the question whether the State of Washington, having taken civil and criminal jurisdiction over the Colville Indian Reservation pursuant to Public Law 83-280,[1] may validly impose its excise taxes on a Colville Indian conducting a retail business on his trust land within the reservation.

In its decision, the Supreme Court of the State of Washington has interpreted Public Law 83-280 in such a sweeping manner as to extinguish all Indian immunities from State taxation, including those flowing from federal statutes, and those implicit in federal programs and policies, all long protected by decisions of the Supreme Court. The

1. App. A, p. A-8

Washington Court holds that Public Law 83-280 repeals the federal Indian trader statutes and makes State excise taxes, RCW Chapter 82, applicable to all Indian commerce on each of the eleven Indian reservations over which the State has assumed jurisdiction. The practical effect of the Washington Court's decision is to annihilate the sovereign powers of Indian tribes to impose their own tax and to regulate commerce on their reservations.

More important, the decision subjects Indian trust property to State taxation in a manner specifically prohibited by federal statutes.

Most significant of all, the Washington Court holds that Public Law 83-280 subjects Indians and Indian reservations to all State laws except those expressly excluded by its provisions.

Appellant, Leonard Tonasket, prays that, upon review and hearing, the judgment entered herein by the Supreme Court of the State of Washington on November 15, 1971, be reversed.

OPINIONS BELOW

The opinion of the Washington Court is reported at 79 Wn.2d 607, 488 P.2d 281 (1971), and is reprinted in the Single Appendix at page 41. The superior court's (trial court) Memorandum Opinion is not reported but is reprinted in the Single Appendix at page 19. The judgment appealed from (being the Remittitur) is reprinted in the Single Appendix at page 57.

JURISDICTION

On March 8, 1967, Leonard Tonasket, a full-blood Colville Indian, filed a complaint [2] in the Superior Court

2. Single App., p. 6.

for the State of Washington for Thurston County, seeking a declaratory judgment that RCW Chapter 82, as applied, is invalid and repugnant to Article I, Section 8, clause 2 of the United States Constitution (the Indian Commerce clause), 25 U.S.C. § 261 *et seq.* (the federal Indian trader statutes), 24 Stat. 388 (the General Allotment Act of February 8, 1887), the sovereignty of the Colville Confederated Tribes, decisions of the Supreme Court, federal laws and regulations, and federal Indian policy. The complaint prayed that the State be enjoined from taxing, harassing, or interfering with Leonard Tonasket's retail business conducted on his trust allotment in the Colville Indian Reservation, and the State be directed to return merchandise confiscated from his business.

On March 21, 1968, the matter was tried in the superior court and on Oct. 7, 1968, Honorable Hewitt A. Henry rendered a Memorandum Opinion holding that Leonard Tonasket's business is subject to State taxes and that an injunction would not lie.

On January 21, 1969, judgment [3] was entered adjudging that all the excise tax laws of the State apply to all commerce on the Colville Indian Reservation, whether by Indian traders or not, as a direct result of assumption of jurisdiction over the Tribes and their members by the State pursuant to Public Law 83-280.

On January 23, 1969, Leonard Tonasket filed a timely Notice of Appeal[4] to the Washington Court.

On September 2, 1971, the Washington Court affirmed

3. Single App., p. 26.

4. R. 29

and expanded the decision of the superior court by rendering a written opinion holding that all State laws apply to the Colville Indian Reservation and its members except those expressly excluded by Public Law 83-280.

On November 15, 1971, the Washington Court issued to the superior court its Remittitur, which is the judgment enforcing the written opinion of the Washington Court entered September 2, 1971.

On December 10, 1971, Leonard Tonasket filed in the Washington Court a timely Notice of Appeal[5] to the Supreme Court.

The jurisdiction of the Supreme Court to review this judgment by appeal is conferred by 28 U.S.C. § 1257(2), which reads in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "• • •
>
> "(2) By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Warren Trading Post Co. v. Arizona State Tax Commission*, 380 U.S. 685, 686 (1965); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 288, 289 (1921).

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5. R. 186

CONSTITUTIONAL PROVISIONS STATUTES AND REGULATIONS INVOLVED

(Only the footnoted items appeal in Appendix A)

United States Constitution, Article I, Section 8, clause 2[6] (the Indian commerce clause).

25 U.S.C. § 261 *et seq.*, (19 Stat. 200, 1876)[7] (Indian Traders Act).

25 U.S.C. § 348 (General Allotment Act of 1887).

25 U.S.C. § 1302-3 (Indian Bill of Rights)

25 U.S.C. § 1321-26[8] (authorizing States to assume or retrocede certain jurisdiction over Indian country).

25 C.F.R. § 251 (1965)[9] (regulations of the Bureau of Indian Affairs pertaining to Indian traders).

25 C.F.R. § 91.12, § 91.13[10] (regulations of the Bureau of Indian Affairs pertaining to loans of tribal funds).

Public Law 83-280 (67 Stat. 588, 18 U.S.C. § 1162; 28 U.S.C. § 1360)[11] (authorizing States to assume certain jurisdiction over Indian country).

Executive Order of July 2, 1872, 1 Kapp. 916[12] (establishing the Colville Indian Reservation).

Constitution and By-Laws of the Confederated Tribes of the Colville Indian Reservation, Washington.[13]

Colville Tobacco Ordinance As Amended, Resolution 1972-375.[14]

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6. App. A, p. A-1
7. App. A, p. A-1
8. App. A, p. A-2
9. App. A, p. A-6
10. App. A, p. A-7
11. App. A, p. A-8
12. App. A, p. A-12
13. App. A. p. A-13
14. App. A, p. A-23

Title 82 of the Revised Code of Washington covers all of the excise taxes imposed by Washington State law, and the following chapters are involved herein:

Chapter 82.04—business and occupation tax on manufacturers, retailers and other forms of business.

Chapter 82.08—retail sales tax on all retail sales.

Chapter 82.12—use tax on use of personal property in the State.

Chapter 82.16—public utility tax, imposing a tax on all persons engaging in certain businesses.

Chapter 82.24—tax on cigarettes.

82.24.020—(See below, ch. 157, Laws of 1972, 1st Ex. Sess., 519)

82.24.050—Duty of retailer.[15]

82.24.080—(See below, ch. 157, Laws of 1972, 1st Ex. Sess., 519)

82.24.110—Other offenses—Penalty.[16]

82.24.130—(See below, ch. 157, Laws of 1972, 1st Ex. Sess., 519)

82.24—New sections. (See below, ch. 157, Laws of 1972, 1st Ex. Sess., 519)

Chapter 82.26—tax on tobacco products.

Chapter 82.28—tax on certain mechanical devices.

Chapter 82.32—general administrative provisions

82.32.030—Registration certificates.[17]

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15. App. A, p. A-28
16. App. A, p. A-29
17. App. A, p. A-30

82.32.210—Tax warrant—Levy upon property —Revocation of certificate of registration.[18]

82.32.240—Tax constitutes debt—Priority of Lien.[19]

82.32.290—Unlawful acts—Penalties.[20]

Chapter 82.36—motor vehicle fuel tax.

Chapter 82.40—use fuel tax.

Chapter 82.44—motor vehicle excise.

Chapter 82.48—aircraft excise.

Chapter 82.50—house trailer excise.

Chapter 157, Washington Laws, 1972, 1st. Ex. Sess., p. 519-525[21] (including veto message of Governor Evans of February 27, 1972).

QUESTIONS PRESENTED

The basic questions presented are the following:

1. Does Public Law 83-280 allow State excise taxes to be validly imposed upon Indian commerce conducted by a full-blood Indian upon his trust land in an Indian reservation which is subject to State civil and criminal jurisdiction, where failure to pay such taxes may result in levy and sale of his real or personal property?

2. Does Public Law 83-280 impliedly repeal the federal Indian trader statutes on Indian reservations which are subject to State civil and criminal jurisdiction?

3. Does Public Law 83-280 make all State laws except those expressly excluded by its provisions applicable to Indians and Indian reservations which are subject to State civil and criminal jurisdiction?

18. App. A, p. A-31
19. App. A, p. A-32
20. App. A, p. A-33
21. App. A, p. A-34

STATEMENT OF THE CASE

The Colville Confederated Tribes comprise eleven separate tribes of Indians who formerly occupied large areas of Eastern Washington until they were placed upon the Colville Indian Reservation established by Executive Order of the President of the United States in 1872.[22] The Tribes are recognized by the United States Government, Bureau of Indian Affairs, and are governed by a Constitution and By-Laws approved by the Secretary of the Interior on December 26, 1938.[23] Of the 5,432 enrolled members of the Tribes, approximately half live on the Colville Indian Reservation which encompasses 1.3 million acres and is governed by the 14-member Colville Business Council.

The land upon which Leonard Tonasket operates his retail store is allotted land held in trust for him by the United States.

Leonard Tonasket, a full-blood enrolled member of the Colville Confederated Tribes, is a direct descendant of Chief Tonasket of the Okanogan Band, one of the eleven tribes in the confederacy on the Colville Indian Reservation.

In 1963 Leonard Tonasket leased a store in East Omak on the Colville Indian Reservation and established a retail business, selling cigarettes and other merchandise. On April 9, 1964, Leonard Tonasket applied to the Tribal Loan Office for a loan of federally-restricted funds in the sum of $1,000 specifically for the purchase of a larger cigarette inventory.[24] Mr. Robert D. Holtz, Area Director of the Bureau of Indian Affairs for the Portland Area Office,

22. App. A, p. A-12
23. App. A., p. A-13
24. Single App., p. -3

approved[25] the cigarette inventory loan in the sum of $800, and a mortgage upon Mr. Tonasket's trust allotment S-2026 was given to secure the loan, all pursuant to the provisions of 25 C.F.R. § 91.12 *et seq.* Thereafter, Leonard Tonasket borrowed from the tribal loan office an additional $6,000 of federally-restricted funds with which to construct a new store building on his trust allotment to expand his retail business,[26] and again, a mortgage upon his trust allotment S-2026 was given to secure the loan.

Because the federal Indian trader statutes do not require a license of a trader on an Indian reservation who is a full-blood Indian (25 U.S.C. § 264), Leonard Tonasket did not obtain a federal trader's license. And because he is a full-blood enrolled member of the Colville Confederated Tribes operating a retail store on his trust land with the full sanction of the Federal Government and with federally-restricted funds, Leonard Tonasket did not register with the State of Washington or affix tax stamps to cigarettes in his possession and being sold in his business.

In February of 1967, agents of the Washington Tax Commission entered the Colville Indian Reservation, seized a great number of cigarettes from Leonard Tonasket's trust land, and placed him under arrest for failing to register with the Tax Commission in violation of RCW 82.32.030 and RCW 82.32.290, possessing unstamped cigarettes in violation of RCW 82.24.050 and RCW 82.24.110, and selling unstamped cigarettes in violation of RCW 82.24.050 and RCW 82.24.110.

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25. Single App., p -5
26. R. 81

Approximately 800 cartons of cigarettes were seized from Leonard Tonasket's trust land. As a result of the action of the Washington Tax Commission, Leonard Tonasket commenced the present action which culminated in the decision of the Washington Court on November 15, 1971.

On February 19, 1972, the Washington State Legislature enacted a new cigarette tax law, Chapter 157, Washington Laws, 1972, 1st. Ex. Sess. Section 7 of the Act resulted from the loud clamor of non-Indian citizens who desired to continue purchasing cigarettes at military commissaries taxfree and in the States of Oregon and Idaho, whose cigarette taxes are, respectfully, 13¢ and 10¢ per package less than Washington's.[27]

Section 7 provides:

> "[A] person may acquire and physically possess, if acquired and possessed for purposes other than resale, four hundred or less cigarettes at any single time without incurring tax liability under this chapter, RCW 28A.47.440 and RCW 73.32.130."

This section, in the words of Governor Evans' veto message to the Washington State Legislature,

> "[L]egitimatizes individual possession of two cartons or less of unstamped cigarettes if held for personal use, thus legitimatizing to that extent non-Indian purchases from Indian sellers who have not collected the tax otherwise due from such buyers."

On March 10, 1972, the Colville Business Council enacted the Colville Tobacco Ordinance, Resolution 1972-125. The ordinance was amended as Resolution 1972-375 on June 23, 1972.

The Colville Tobacco Ordinance makes the sale and distribution of cigarettes and other tobacco products on

27. Oregon Revised Statutes § 323.030; Idaho Code § 63-2503.

the Colville Indian Reservation a tribal enterprise, establishing tribal tobacco outlets on trust land in the Reservation. Each outlet is managed by an enrolled member of the Tribes pursuant to a tribal license *and* a federal Indian trader's license.

The ordinance imposes a tribal tax of 3¢ per package of cigarettes sold or distributed on the Reservation.

All tobacco purchases by the Tribes under the ordinances are made with federally-restricted tribal funds, and all tobacco products situate in tribal tobacco outlets remain federally-restricted tribal property until sale to the ultimate consumer.

Finally, the ordinance restricts sales to non-Indians to two cartons per sale, in keeping with the spirit of the new State cigarette law, and prohibits sales of tobacco products to persons under the age of 18 years, as required by 25 C.F.R. § 251.17.

Pursuant to the Colville Tobacco Ordinance, the Commissioner issued a federal Indian trader's license to appellant on February 28, 1972,[28] and the Colville Confederated Tribes issued appellant a tribal license as operator of Tobacco Outlet No. 1 on May 25, 1972.[29] Thereupon, appellant began operating his tobacco business for the Tribes under the Colville Tobacco Ordinance.

The tobacco ordinance adopted by the Colville Confederated Tribes has been adopted by the Makah, Lummi and Suquamish Tribes in the State of Washington and is being considered by many more. Most of the tribes considering the ordinance have no tribal income[30] and seek to

28. Appendix B, p. B-1
29. Appendix B, p. B-2
30. Appendix C, p. C-1

exercise their sovereign right to tax for the first time as a means of becoming self sufficient and achieving the economic independence stressed as our national goal for American Indians by President Nixon in his speech to Congress of July 8, 1970.[31]

SUMMARY OF ARGUMENT

1. The Colville Confederated Tribes Have All the Powers of a Sovereign Government Except Those Specifically Taken by Congress

The sovereign powers of an Indian tribe to regulate commerce on its reservation and to levy taxes on such commerce may not be impaired by the State unless Congress has given its express consent.

2. Public Law 83-280 Was Enacted by Congress for the Limited Purpose of Giving States Jurisdiction Over Criminal and Civil Litigation Arising on Indian Reservations

The clear legislative purpose of Congress in enacting Public Law 83-280 was to give States jurisdiction over criminal and civil litigation arising on Indian reservations. The language of section 4(a) of the Act making "civil laws . . . of general application" effective on Indian reservations must be read as referring only to State civil laws having to do with "civil causes of action" and not to State excise tax laws.

3. Washington Excise Taxes Do Not Apply on the Colville Indian Reservation Since Congress Has Not Specifically Granted Taxing Power to the State

By clearly established legislative policy, Congress applies State taxes within federal areas or with respect to Indians only by express legislation. Congress has not done so in Public Law 83-280.

31. H.R. Doc. No. 91-363, 91st Congress, 2d Sess. (1970).

4. The Washington Court's Decision Would Terminate Indian Tribes Contrary to Public Law 83-280 Which Provides for Continued Tribal Existence

Application of all State civil laws to the Colville Indian Reservation except those specifically exempted in section 4(b) of Public Law 83-280 is inconsistent with the Constitution and By-Laws of the Tribes and the Civil Rights Act of 1968, and would essentially terminate the Colville Confederated Tribes as a political entity.

5. Congress Has Exclusive Jurisdiction of Trading on the Colville Indian Reservation

The Federal Government has preempted the field of trading on Indian reservations by statute and regulation. The Supreme Court has made it clear that States may not interfere with that preemption as Washington is now attempting to do.

6. Imposition of State Excise Taxes on Indian Personal Property Is Prohibited by Public Law 83-280

Section 4(b) of Public Law 83-280 and the *Squire v. Capoeman* and *United States v. Rickert* decisions prohibit State taxation of Indian trust land or personal property used in the economic development of trust land.

7. Federal Policy Regarding Indian Trust Land Prohibits State Taxation of Indians and Their Property and Commercial Activity on Indian Reservations

The State excise taxes here sought to be imposed are in direct conflict with the federal policy of maximizing profitability of Indian trust land.

8. Application of State Excise Tax Violates Tribal Sovereignty of the Colville Confederated Tribes

State excise taxes infringe upon the sovereign powers of the Colville Confederated Tribes to tax and regulate

commerce on the Reservation, directly contrary to the tribal Constitution and By-Laws and the *Williams v. Lee* decision.

9. Congressional Acts and Other Indian Protections Are Not Repealed or Destroyed by Implication

Federal preemption of trading on Indian reservations, Indian tax immunities, federal Indian policies and sovereign tribal powers are not to be deemed repealed by implication.

ARGUMENT

The opinion of the Washington Court upholding application of State excise taxes to retail sales on the Colville Indian Reservation rests upon a simple but very seductive syllogism:

> Under Public Law 83-280, the civil jurisdiction of Washington over the Colville Indian Reservation gives "those civil laws of such State that are of general application to private persons or private property . . . the same force and effect . . ." within the reservation as elsewhere within the State.
>
> The excise taxes of RCW Title 82 apply generally within the State.
>
> Therefore, the excise taxes of RCW Title 82 apply on the Colville Indian Reservation.

The Washington Court found support for its conclusion in two doctrines: one legal, the other equitable.

First, the Court noted section 4(b) of Public Law 83-280 which excludes trust property from State jurisdiction. Applying the "venerable phrase," *expressio unius est exclusio alterius*, the Washington Court concluded that Congress intended no other restriction upon State jurisdiction, and held:[32]

32. Single App., p. 46

"The trial court was of the opinion that the authorization contained in Public Law No. 83-280 was *plenary*, with only the limitations expressed therein, and gave the states power to regulate the merchandising activities of Indians in the same way that they regulate such activities of their citizens generally, and to levy excise taxes upon them. *We agree.*" (Emphasis supplied.)

Second, the Washington Court, after a cursory examination of the legislative history of Public Law 83-280, decided that Congress intended to add the financial burdens of State law to Indian tribes who obtained the so-called benefits of State jurisdiction. The Washington Court held:[33]

"We cannot conceive that it was the intent of Congress to extend to Indians only the protection and benefits of state laws, *with none of their attendant duties and responsibilities*, and we find no such intention expressed in the statute." (Emphasis supplied.)

and further held:[34]

"It was the evident purpose of Congress to facilitate the emergence of the Indian from his inferior status . . . to the status of full citizen, . . . *with all of the privileges and responsibilities of such status.*" (Emphasis supplied.)

Once it had reached this broad conclusion, the Washington Court bowled over every legal obstacle in its path, including federal policies regarding Indian trust property and tribal sovereignty, Supreme Court decisions, and, finally, the federal Indian trader statutes. The Court reached the astonishing conclusion that:[35]

"Here, the Congress has not only failed to preempt the field of Indian trading but it has authorized the state to assume jurisdiction over such trading; . . ."

33. Single App., p. 49
34. Single App., p. 53
35. Single App., p. 53

The end result of the Washington Court's opinion is to apply all Washington excise taxes to all commercial activity on the Colville Indian Reservation, including retail sales of milk and bread to poor Indian families.

The reasoning of the Washington Court has led it to an erroneous result for three principal reasons.

First, the Washington Court fails to come to grips with the concept of sovereignty of an Indian tribe as a governmental entity under federal law. Second, the Washington Court misconstrues the federal "trust doctrine" regarding Indian property and its use. Finally, the Washington Court misreads Public Law 83-280 and its legislative history as a termination act, rather than a law specifically tailored to meet a "law and order" need on Indian reservations.

Each of these areas is abstruse and complex and all involve the unique three-cornered relationship between federal, state and tribal governmental entities. But upon a careful analysis of each area in this significant case, the reasoning of the Washington Court is demonstrably false.

1. The Colville Confederated Tribes Have All the Powers of a Sovereign Government Except Those Specifically Taken by Congress

Prerequisite to a proper determination of this case is a preliminary consideration of the basic nature of the Colville Confederated Tribes as a political entity.

The original sovereign status of Indian tribes is explicated at length in FEDERAL INDIAN LAW, 1958 (1966 printing by Association on American Indian Affairs, Inc., N.Y.) at page 395:

> "Indian self-government includes generally the power of an Indian tribe, to the extent that it has

not been limited by Federal law, to adopt and operate under a form of government of the Indians' choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by municipal legislation, and to administer justice. Originally, those powers which were exercised by an Indian tribe were not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited dependent sovereignty which had not been extinguished by Federal action. Each Indian tribe began its relationship with the Federal Government as a sovereign or quasi-sovereign government, recognized as such by treaty and in legislation. These powers of sovereignty have been limited from time to time by special treaty provisions and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, should be exercised elsewhere. *The statutes of Congress, then, must be examined carefully in many instances to determine its source or its positive content.*" (Emphasis supplied.)

It is stated further at page 398:

"The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possessed, in the first instance, all the powers of any sovereign State. (2) Conquest rendered the tribe subject to the legislative power of the United States and, in substance, terminated the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, *but did not by itself terminate the internal sovereignty of the tribe*, i.e., its powers of local self-government. (3) These internal powers were, of course, subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, many powers of internal sovereignty have remained in the Indian tribes and in their duly constituted organs of government." (Emphasis supplied.)

Two essential attributes of tribal sovereignty are the

powers to tax and to regulate commerce on Indian reservations.

In *McCulloch v. Maryland*, 4 Wheat. 316, 428 (1819), this Court held that the power to tax is an attribute of sovereignty "essential to the very existence of governments." As stated in FEDERAL INDIAN LAW at page 435:

> "One of the powers essential to the maintenance of any government is the power to levy taxes. That power is an attribute of tribal quasi-sovereignty which continues unless withdrawn by act of Congress or limited by treaty."

Morris v. Hitchcock, 194 U.S. 384 (1904); *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir., 1956); *Buster v. Wright*, 135 Fed. 947 (8th Cir., 1905), *appeal dismissed*, 203 U.S. 599 (1906).

The power of an Indian tribe to regulate commerce on its reservation derives in part from its power to tax and in part from its power to regulate the use and disposition of property on the reservation. As stated in FEDERAL INDIAN LAW at page 440:

> "In the first place, the tribe has, with respect to tribal property, certain rights and powers commonly incident to property ownership. In the second place, the Indian tribe has, among its powers of sovereignty, the power to regulate the use and disposition of individual property among its members."

and again at page 443-444:

> "In its quasi-sovereign capacity and in the exercise of local self-government, it may exercise powers similar to those exercised by any State or municipal corporation in regulating the use and disposition of private property, save insofar as it is restricted by specific statutes of Congress."

As tribes governed by a federally-approved Constitution and By-Laws, the Colville Confederated Tribes, in their quasi-sovereign capacity, enumerate among their attributes of sovereignty the power to tax and the power to regulate commerce, *except to whatever extent those powers have been diminished by express legislation of Congress.* A major aspect of this case is the question whether the sovereign tribal powers to tax and to regulate commerce on the Reservation are altered by Public Law 83-280.

2. Public Law 83-280 Was Enacted by Congress for the Limited Purpose of Giving States Jurisdiction Over Criminal and Civil Litigation Arising on Indian Reservations

A thorough examination of Public Law 83-280 and its legislative history reveals a congressional intent to provide a State forum for criminal and civil litigation arising on Indian reservations, but no congressional intent to affect Indian tax immunities. The langage of section 4(a) of Public Law 83-280 granting Washington *civil* Indian jurisdiction reads as follows:

> "Each of the States . . . shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country . . . to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State: . . ."

Nowhere in the language of section 4(a) is the word "tax" employed. But the Washington Court reasoned that the broad language referring to "civil causes of action" and "civil laws . . . of general application," when coupled with Congress' failure to expressly exclude State taxing power in

section 4(b) of the Act, constitutes an implied grant of taxing power to the State.

This conclusion of the Washington Court is directly contrary to the well-established doctrine of law of the Supreme Court that all agreements, treaties, statutes and laws are to be liberally construed to protect the rights of Indians with all ambiguities resolved in the Indians' favor. In *Winters v. United States*, 207 U.S. 564 (1908), the Supreme Court held at page 576:

> "By rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians."

Again, in *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918), the Supreme Court stated at page 89:

> "[S]tatutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians."

The Washington Court has applied this principle in reverse, resolving doubtful expressions in favor of the State and liberally construing the "civil laws . . . of general application" language against the Indians. This language of section 4(a) is broad enough, however, to lend some support to the Washington Court's position. But a comprehensive examination of Public Law 83-280 set within the context of federal Indian law and the specific legislative purpose of Congress in its enactment clearly refutes the conclusion reached by the Washington Court.

A. *Law and Order Purpose of Public Law 83-280.*

Public Law 83-280 was not enacted in a vacuum. Rather it was one of a large number of pieces of legislation considered by the 83rd Congress in 1953 at a time when Con-

gress was strongly supporting federal termination of Indian tribes. An examination of Senate Report No. 699[36] which accompanied the bill reveals that although the Committee on Interior and Insular Affairs operated in five major areas of legislation affecting Indians in the 83rd Congress, yet Public Law 83-280 itself was tailored specifically to meet only two narrow legislative purposes, namely, to extend State criminal laws to Indian country and to make provision for State courts "to adjudicate *civil controversies* of any nature affecting Indians within the State, except where trust or restricted property was involved."[37] (Emphasis supplied.)

This purpose is clearly delineated in the report as follows:

> "As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created *a hiatus in law-enforcement authority* that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.
>
> "Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts *to adjudicate civil controversies* arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.
>
> "After consideration of the proposed legislation, the

36. U.S. Code Cong. & Ad. News, 1953, 83d Cong., at 2409
37. *Ibid*, at 2411

committee concluded that: any legislation in this area should be on a general basis, making provision for all affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances *to civil transactions* among the Indians, insofar as these customs or ordinances are not inconsistent with applicable State laws." (Emphasis supplied.)

Public Law 83-280 stemmed, then, from a lack of adequate law enforcement on Indian reservations, both in the criminal and civil areas. The legislative history of the Act, including the House and Senate reports, the remarks made in Congress, and accompanying documents printed in the Congressional Record, are replete with indications that the sole concern of Congress in enacting Public Law 83-280 was to provide a State forum for adjudication of criminal and civil litigation arising on Indian reservations.[38]

The statements by Senator Thye, and the letter from Governor Youngdahl of Minnesota, make specific reference to "criminal offenses" and "civil causes of action" committed or arising on Indian reservations, specifically in the areas of child welfare and youth conservation. Governor Youngdahl states at page 10783:

> "Experience with tribal courts and tribal justice has not been satisfactory and probably never could be an adequate substitute for regular civil law."

Again, Senate Report 699 demonstrates the "law and order" legislative purpose of Public Law 83-280. The report (see n. 36) states at 2412:

38. 83d Cong. 1st Sess., 99 Cong. Rec. 10782-10783 (1953)

> "The following tribes, *each of which has a tribal law and order organization functioning in a reasonably satisfactory manner*, have advised Bureau officials of their objections to State jurisdiction, and their reservation areas have therefore been excepted in the transfer legislation: Red Lake Band of Chippewa Indians of Minnesota, Warm Springs Tribe of Oregon, and the Menominee Tribe of Wisconsin." (Emphasis supplied.)

Following the committee reports, Congress exempted the three named tribes from State jurisdiction in section 2(a) of Public Law 83-280.

In light of this legislative history and resolving doubtful expressions in favor of the Indians, it now becomes clear that the sweeping language of section 4(a) making "those civil laws of such State that are of general application to private persons or private property" applicable on Indian reservations has reference only to that body of State civil law having to do with causes of action, such as tort law, contracts law, etc.

Adopting the committee recommendation that the Act "should retain application of Indian tribal customs and ordinances *to civil transactions* among Indians," Congress provided in section 4(c) of the Act that tribal ordinances and customs not inconsistent with State civil law be given full force and effect "in the determination of civil causes of action pursuant to this section."

The Supreme Court itself recently recognized that jurisdiction granted in Public Law 83-280 is a matter of litigation. In *Kennerly v. District Court of 9th Judicial District of Montana*, 400 U.S. 423 (1971), the Supreme Court referred in n. 1 on page 424 to Public Law 83-280 as an act which,

> "[E]xtended jurisdiction over *civil causes of action arising in Indian country* to which Indians are parties to five States. The statute is illustrative of the detailed regulatory scrutiny which Congress has traditionally brought to bear on the extension of *state jurisdiction, whether civil or criminal, to actions to which Indians* are parties arising in Indian country." (Emphasis supplied.)

Again, the Supreme Court stated at page 428, when referring to the Civil Rights Act of 1968 (25 U.S.C. § 1321-1326) which provided for retrocession of Indian jurisdiction to the Federal Government, that the Act:

> "[R]epealed § 7 of the 1953 Act and substituted a new regulatory scheme for the extension of State civil and criminal jurisdiction to *litigation* involving Indians arising in Indian country." (Emphasis supplied.)

This analysis of the intended effect of Public Law 83-280 is corroborated by a careful examination of the Civil Rights Act of 1968.

25 U.S.C. § 1322, gives States the option of assuming total or *only partial* jurisdiction of civil causes of action arising on Indian reservations. The section again contains the sweeping phrase "civil laws . . . of general application" used in the 1953 Act, with no "total" or "partial" qualification. But the phrase "civil laws . . . of general application" could only make sense in a *partial assumption* situation if it is read as restricted to those State civil laws directly affecting the particular civil causes of action over which jurisdiction is assumed. To read it as the Washington Court does would allow the ludicrous result of granting a State *total* taxing power on an Indian reservation in which the State had assumed partial jurisdiction only; for example, jurisdiction over domestic relations.

Again, this conclusion is corroborated by 25 U.S.C. § 1326, which provides:

> "State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or *civil causes of action*, or with respect to both, shall be applicable in Indian country only where the enrolled Indians . . . accept such jurisdiction by a majority vote. . . ." (Emphasis supplied.)

B. *Lack of Taxing Purpose of Public Law 83-280.*

Returning now to Public Law 83-280, one discovers nowhere in the entire legislative history of the Act any reference to taxation. On the contrary, Congress was well aware of the possible financial burdens to States to whom Indian jurisdiction was transferred. House Report No. 848 points out that authorities in some counties in Nevada "stated they would accept such jurisdiction only with an accompanying Federal subsidy."[39]

The letter of Orme Lewis, Assistant Secretary of the Interior, included in House Report No. 848 recommends that jurisdiction over the Warm Springs Tribe not be granted to Oregon since the two counties in which the reservation is located "are poorly financed and heretofore have been unable to render any appreciable assistance to the Indians on the reservation."[40]

Mr. Lewis' letter also indicates that the States of Montana and South Dakota "would be agreeable to a transfer of jurisdiction if such transfer were accomplished by a complete Federal subsidy."[41]

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39. Senate Report 699, U.S. Code Cong. & Ad. News, 1953, 83d Cong. at 2412

40. *Ibid*, at 2413

41. *Ibid*, at 2414. In 1957 the South Dakota Legislature provided for State assumption of Indian jurisdiction on a county by county basis.

Keeping in mind that Congress was anxious for States to assume the jurisdiction it granted in Public Law 83-280, one is struck by the utter absence in the entire legislative history of the Act of any reference to a congressional intent that Public Law 83-280 grant States taxing authority within Indian reservations. Surely this is the point in the dialogue between Congress and the States at which Congress would have dispelled the financial fears of the States and counties contemplating acceptance of Indian jurisdiction with a clear statement that Public Law 83-280 did include such taxing authority, or with an amendment to the language of Public Law 83-280 stating that "civil laws . . . of general application, including tax laws, . . ." would apply on Indian reservations. Congress' failure to do so indicates that Congress was aware that Public Law 83-280 made no provision for State taxing authority but was not in a mood to make such provision or to subsidize transfer of jurisdiction.

South Dakota Compiled Laws 1-1-12 through 1-1-21 (1967). Section 1-1-14 of the statutes conditions the assumption of Indian jurisdiction as follows:

> "Prior to the adoption of such resolution, the county commissioners shall negotiate and contract with the federal bureau of Indian affairs of the United States department of interior for reimbursement of any authorized and appropriated federal funds for the added costs to any county in connection with the assumption of said jurisdiction."

Since the Bureau of Indian Affairs had no authority to participate in such a reimbursement contract, the counties of South Dakota did not assume Indian jurisdiction pursuant to the statutes. Secretary of the Interior, Annual Report (1957) at 253-4. In 1961 the South Dakota Legislature amended its law by providing in section 1-1-21 for State assumption of Indian jurisdiction on State highways, but provided that no further jurisdiction be assumed,

> "[U]nless and until the Governor of the state of South Dakota, if satisfied that the *United States of America has made proper provision for the reimbursement* to this state and its counties *for the added costs in connection with the assumption of said jurisdiction*, has issued his proper proclamation duly filed with the secretary of state declaring the said jurisdiction to be assumed and accepted." (Emphasis supplied.)

3. Washington Excise Taxes Do Not Apply on the Colville Indian Reservation Since Congress Has Not Specifically Granted Taxing Power to the State

Congress has a clearly established legislative policy of enacting express legislation whenver it wants State taxes to apply within Indian reservations.

In 25 U.S.C. § 564j (The Klamath Termination Act), Congress provides that after termination of the tribe and distribution of property,

> "[S]uch property and any income derived therefrom by the individual . . . shall be subject to the same taxes, State and Federal, as in the case of non-Indians. . . ."

Identical language extending taxing powers to States is found in the following federal termination statutes: 25 U.S.C. § 677p (Ute); 25 U.S.C. § 699 (Western Oregon Tribes); 25 U.S.C. § 749 (Paiute); 25 U.S.C. § 798 (Wyandotte); 25 U.S.C. § 898 (Menominee); 25 U.S.C. § 978 (Ponca).

All the cited acts were enacted by Congress *after* enactment of Public Law 83-280. That Congress used such express and specific language to extend State taxing powers to the Indians involved indicates that prior to the termination acts, state taxing powers did not apply, although in some cases Public Law 83-280 did.

With respect to the Menominee Tribe of Wisconsin, the Supreme Court has held that even though the Menominee Termination Act lacked specific congressional language reserving hunting and fishing rights, nevertheless, the Termination Act could not be considered "as a backhanded way of abrogating the hunting and fishing rights of these Indians."[42]

42. *Menominee Tribe v. United States*, 391 U.S. 404 (1968).

Likewise, Public Law 83-280 should not be considered as a backhanded way of abrogating the long standing immunity of Indians from State taxes on their reservations. While Congress has the power to abrogate these immunities, the intention to do so is not to be lightly imputed to Congress. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), *Pigeon River Co. v. Cox Co.*, 291 U.S. 138 (1934), *Squire v. Capoeman*, 351 U.S. 1 (1956).

In addition to congressional policy, the Supreme Court upheld tax immunity of Indians in *Squire v. Capoeman*, *supra*. *Squire* dealt with an attempt by the Federal Government to tax income from the sale of timber of allotted trust land granted to Indian taxpayers under the provisions of the General Allotment Act of 1887 (24 Stat. 388). The Supreme Court held that section 5 of the Act, requiring conveyance of lands to the Indian allottees in fee "free from all charge or encumbrances," and section 6 of the Act, providing that when an Indian allottee receives a patent in fee simple, his former trust land "shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent," necessarily exempted from federal income tax all income derived from timber sales. The rationale of the Supreme Court was twofold: First, if such income were subject to federal income tax, then nonpayment of the tax would result in a tax lien upon the trust land or a prior debt which would attach to the land upon its receipt by the Indian allottee in fee simple, either of which would violate the Act; and second, congressional policy of allowing Indians to go forward when declared competent with the necessary chance of economic survival in competition with others would be defeated if the

corpus of the trust could be depleted through payment of federal income tax.

The doctrine is well established that original sovereign tax immunities of Indians will be protected by the Supreme Court and will not be deemed abrogated by later federal statutes *in the absence of express language*. The *Squire* case stands squarely for this proposition, and it has been explicitly adopted by the United States Court of Claims in *Mason v. United States* ....F.2d.... (Docket No. 417-70, decided June 16, 1972).

The power to tax is a peculiar sovereign attribute of any governmental entity and does not fall within any reasonable interpretation of the phrase "civil causes of action" which is the subject matter of Public Law 83-280. As will be demonstrated, the existence of State taxing power on an Indian reservation necessarily results in annihilation of the sovereign tribal power to tax. In light of the trust relationship between the United States and Indians, it is unthinkable that Congress would extend all State excise tax to Indians and commercial activities on the Indian reservations without expressly saying so. To hold that Congress has done so implicitly in Public Law 83-280 would, indeed, be to impute unjustifiably to Congress a "sorry breach of faith with the Indian people."

4. The Washington Court's Decision Would Terminate Indian Tribes Contrary to Public Law 83-280 Which Provides for Continued Tribal Existence

The opinion of the Washington Supreme Court not only affirmed the judgment of the trial court that all State excise tax laws apply on the Colville Indian Reservation, but went further, and held that *all* civil laws of the State apply with only the exemptions "clearly and concisely set

forth" in section 4(b) of Public Law 83-280. As will be demonstrated, the effect of the Washington Court's decision makes Public Law 83-280 a termination act which destroys the continued existence of Indian tribal entities.[43]

Not only was Public Law 83-280 not intended by Congress to be a termination act, the Act contains a clear indication that tribal governments were to continue. Section 4(c) of the act provides:

> "Any *tribal ordinance or custom heretofore or hereafter adopted* by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." (Emphasis supplied.)

The quoted language is consistent only with a congressional assumption that Indian tribes would continue to exist and that their governing bodies would continue to enact ordinances governing civil causes of action arising within their reservations.

Whenever Congress desires to terminate an Indian tribe, it does so in no uncertain terms. In the Menominee Termination Act, Congress provides that upon termination of the Menominee Tribe:[44]

> "[A]ll statutes of the United States which affect Indians because of their status as Indians shall no longer

43. "The Indian knows that termination takes many forms. He can be flooded out of his reservation; he can be relocated; his reservation can be sold out from under him if he cannot meet taxes to which it is subject. His limited power to protect himself on the reservation from local prejudice and discrimination can be wiped away by the substitution of state laws for tribal law, and state jurisdiction for tribal jurisdiction. All of these, the Indian knows, are variants of one basic truth: the United States Government does not keep its promises. Sometimes it breaks them all at once, and sometimes slowly, one at a time. The result is the same—termination." E. Cahn, *Our Brother's Keeper* 21 (1969).

44. 25 U.S.C. § 899.

> be applicable to the members of the tribe, and the laws of the several States shall apply to the *tribe and its members* in the same manner as they apply to other citizens or persons within their jurisdiction." (Emphasis supplied.)

Thus, all special Indian protections are removed and both "the tribe *and* its members" are made subject to total State jurisdiction. This specific language is a far cry from the much narrower "civil causes of action" and "civil laws . . . of general application to private persons or private property" language of section 4(a) of Public Law 83-280. It must be stressed that Public Law 83-280 does not make the "tribe" itself subject to any State jurisdiction as do the termination acts.

Nor does Public Law 83-280 appear in Title 25, "Indians," of the United States Code which contains the federal statutes protecting the status of Indians or terminating that status. Instead, the civil jurisdiction portion of Public Law 83-280 is found in Title 28, "Judiciary and Judicial Procedure" of the Code, and the criminal jurisdiction portion is found in Title 18, "Crimes and Criminal Procedure," of the Code.

Not only is the legislative history of Public Law 83-280 devoid of any reference to taxation, it is also devoid of any reference to repeal of any of the myriad protections of Indian status or Indian tribes contained in treaties, Executive orders, Title 25 of the United States Code, federal regulations, Supreme Court decisions, and congressional policies. Yet an examination of Washington "civil laws . . . of general application to private persons or private property" will dramatically illustrate that the Washington Court's interpretation of Public Law 83-280 would repeal

those protections and so invade tribal sovereignty as to break down tribal government altogether. Examples follow:

A. *State Bill of Rights Guarantees Generally.*

Perhaps the most basic State "civil laws . . . of general application" are the Bill of Rights guarantees of the Washington State Constitution. If the Washington Court's opinion were applied literally, all those guarantees would apply both to the Tribes and to their members on the Colville Indian Reservation. That Congress did not intend Public Law 83-280 to have so far-reaching an effect is shown by enactment of the Civil Rights Act of 1968, *supra*. The Act pointedly limits tribal government to a lesser degree than federal and state governments are limited in their respective constitutions.

The important differences were recognized in *Groundhog v. Keeler*, 442 F.2d 674 (10th Cir., 1971). The Court noted that the original draft of the Indian Bill of Rights provided limitations and restraints on tribal governments identical to those imposed on state and federal governments by the United States Constitution, but that in the Bill as finally enacted:

> ". . . Congress intended that the provisions of the Fifteenth Amendment, certain procedural provisions of the Fifth, Sixth, and Seventh Amendments, and in some respects the equal protection requirement of the Fourteenth Amendment should not be embraced in the Indian Bill of Rights." *Groundhog, supra*, at 682.

Several general protections of the Washington State Constitution invite special attention.

B. *State Privileges and Immunities.*

Article I, section 12, of the State Constitution provides:

> "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

To apply this provision to the Colville Confederated Tribes would be to destroy the Tribes as a political entity, for it would strike down the prime sovereign right of the Tribes to determine questions of membership, a right guaranteed to the Tribes in Section 2, Article VII, of the Tribal Constitution and By-Laws, which reads:

> "The Business Council of the Confederated Tribes shall have power to prescribe rules and regulations governing future membership in the tribes, including the adoption of members and loss of membership, provided:
>
> "(a) That such rules and regulations shall be subject to the approval of the Secretary of the Interior.
>
> "• • •"

Tribal membership is, of course, the foundation upon which tribal rights rest, including the right to vote, the right to receive per capita distribution of tribal assets, and hunting and fishing and all other treaty protected rights. These significant privileges and immunities are the very essence of Indian status. They may not be interfered with by any State constitutional provisions, for, as held in *Martinez v. Southern Ute Tribe of the Southern Ute Reservation,* 249 F.2d 915 (10th Cir., 1957), at page 920:

> "The courts have consistently recognized that in absence of express legislation by Congress to the contrary, *a tribe has the complete authority to determine all questions of its own membership, as a political*

entity. Patterson v. Council of Seneca Nation, 245 N.Y. 433, 157 N.E. 734; *Waldron v. United States*, C.C., 143 F. 413; *Roff v. Burney*, 168 U.S. 218, 18 S. Ct. 60, 42 L.Ed. 442." (Emphasis supplied.)

C. *State Religious Freedom.*

Article I, section 11, of the State Constitution, as amended by Amendment 34, guarantees religious freedom and states that:

> "No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment."

This provision could not possibly apply to the Colville Confederated Tribes for two reasons:

First, in *Native American Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir., 1959), the Court held that in the absence of a constitutional provision or law of Congress expressly making the Federal First Amendment applicable to Indian nations, no constitutional guarantee of religious freedom applied to Indian tribal governments. If *general* Federal Constitution protections do not bind Indian tribal entities, Public Law 83-280 certainly does not make *general* State Constitution provisions binding upon them.

Second, 25 U.S.C. § 1302 provides that no Indian tribe in exercising powers of self-government shall:

> "(1) make or enforce any law *prohibiting* the free exercise of religion . . ." (Emphasis supplied.)

Congress' careful excision of the "establishment of religion" clause of the Federal First Amendment shows that Congress knew perfectly well in 1968 that no State "establishment" provisions applied to Indian tribal organizations,

and did not wish to make them apply. Indian tribes remain free to establish tribal religion if they choose to do so.

D. *State Right to Vote.*

Article VI, section 1 (Amendment 5) of the Washington State Constitution provides in part:

> "All persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: Provided, That Indians not taxed shall never be allowed the elective franchise: . . . The legislative authority shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provision of this section."

But, Article III, Section 5 of the tribal Constitution and By-Laws provides:

> "Any enrolled member of the Confederated Tribes of the Colville Reservation who is twenty-one (21) years of age or over shall be entitled to vote."

and Section 2 provides:

> "The Business Council, or an election board appointed by the Council, shall determine rules and regulations governing all elections."

The Washington Court's opinion is tantamount to stripping the Colville Business Council of its sovereign power to govern elections and vesting that power in the State Legislature. Such cannot possibly have been Congress' intent in enacting Public Law 83-280.

E. *State Right of Habeas Corpus.*

Article I, section 13, of the State Constitution provides:

> "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it."

The Washington Court's opinion would appear to afford any Indian detained in the tribal jail the right to test the legality of his detention by writ of habeas corpus in State superior court. But the legislative history of the Civil Rights Act of 1968 refutes this conclusion. Representative Reifel stated on the floor of the House on April 10, 1968:[45]

> "[H]e has only those rights which the Tribe is willing to recognize . . . it is not possible for a defendant to ever raise a question in an appeal or in a habeas corpus proceeding."

And in Senate Report 721, which accompanied the Act, Senator Ervin states in part:

> "One needs only to read a sampling of court decisions to realize that the Indian lives in a legal no man's land. In many instances, he is subject to three sovereigns—the Federal Government, State government, and tribal law—which present conflicting claims on the Indian's life."

F. *State Right to Counsel.*

Article I, section 22, of the State Constitution, as amended by Amendment 10, guarantees to persons accused of crimes the right to counsel in language similar to the guarantee of the Federal Sixth Amendment. In *Tacoma v. Heater*, 67 Wn.2d 733, 409 P.2d 867 (1966), the Washington Court held that the language of State constitutional provisions should receive the same definition and interpretation as that given to similar provisions in the Federal

45. 90th Congress, 2d Session, 114 Cong. Rec. 9552 (1968)

Constitution by the Supreme Court. Accordingly, under the State Constitution, an indigent accused has the right to appointed counsel paid for by the State.

In sharp contrast is 25 U.S.C. § 1302(6) which guarantees to an indigent accused the right

> "*[A]t his own expense* to have the assistance of counsel for his defense. . . ." (Emphasis supplied.)

It is clear that the State constitutional guarantee of counsel does not apply to an accused in an Indian tribal court or court of Indian offense.

G. *State Public Office.*

The State court system has jurisdiction to determine questions concerning the holding of public offices of State and municipal governments. Literal application of the Washington Court's opinion would give Colville Confederated Tribes the character of a municipal corporation and allow State courts to determine questions of tribal office holding.

However, in *State v. Bertrand*, 61 Wn.2d 333, 378 P.2d 427 (1963), the Washington Court itself held that the State court system had no authority to determine questions of office holding in the tribal government. The Court stated at page 340:

> "We find no authority, statute, or decisions giving the *courts* of this state jurisdiction to resolve the question of who composes the 'governing body' of the Quinaielt Indian Tribe. The Quinaielt Indian Tribe's control over its elected officials is peculiarly an internal problem and one over which the courts of this state have no jurisdiction."

The foregoing examples are by no means exhaustive,

but suffice to prove that the phrase "civil laws . . . of general application" of section 4(a) of Public Law 83-280 cannot be construed to give the States plenary jurisdiction as the Washington Court holds. Such plenary State jurisdiction would spell termination of Indian tribes as political entities and the trust responsibility of the Federal Government over the tribes would fail. So devastating a result cannot possibly be attributed to Congress in its enactment of Public Law 83-280 since it was *simultaneously* considering termination legislation carefully denominated as such.

Selection of a test by which to determine just which State civil laws Congress intended to apply to Indian reservations inevitably requires a return to the legislative history of Public Law 83-280 and an analysis of the kind appellant has made in section 2, *supra*. Appellant suggests that the only test consistent with Public Law 83-280, congressional policy, and Supreme Court doctrines is: whether the State civil law in question is directly related to specific civil causes of action over which the State has jurisdiction, and is not destructive to continued tribal existence.

5. Congress Has Exclusive Jurisdiction of Trading on the Colville Indian Reservation

Jurisdiction of the United States over Indian commerce is "exclusive and unfettered," *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188 (1876), and includes "commerce with the individuals composing those tribes." *United States v. Holliday*, 70 U.S. 407 (1865). Pursuant to its constitutional authority, Congress has enacted comprehensive federal regulations over Indian commerce.

25 U.S.C. § 261 provides:

"The Commissioner of Indian Affairs shall have the

sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians." (Emphasis supplied.)

Traders who are also full-blood Indians are subject to federal regulation as well, *United States v. Parton*, 132 F.2d 886 (1943), but are exempt from the licensing requirement of 25 U.S.C. § 264, which provides:

> "Any person *other than an Indian of the full blood who* shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: . . ." (Emphasis supplied.)

In *Warren Trading Post Co. v. Arizona State Tax Commission, supra*, the Supreme Court noted that federal preemption of Indian commerce is predicated upon a philosophy of protecting Indians. In *Warren*, Mr. Justice Black stated:

> "We think the assessment and collection of this tax would to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians on reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts. This state tax on gross income would put *financial burdens on appellant or the Indians with whom it deals* in addition to those Congress or the tribes have prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commissioner." 380 U.S. at 690-691. (Emphasis supplied.)

The Supreme Court also made it crystal clear that fed-

eral preemption of Indian commerce is total and exclusive. Mr. Justice Black stated:

> "These apparently all-inclusive regulations and the statutes authorizing them would seem in themselves sufficient to show that *Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders.*" 280 U.S. at 690. (Emphasis supplied.)

The attempt by the Washington Court to distinguish away the holding of the Supreme Court in *Warren* on the ground that Arizona had not assumed Indian jurisdiction as Washington has is specious. The Supreme Court acknowledged the existence of Public Law 83-280 jurisdiction in n. 3 at page 687 of *Warren*, but nevertheless made no exception in its holding for states which have assumed jurisdiction pursuant to Public Law 83-280. The true basis for the *Warren* decision is the federal policy of total protection of Indian economy including both sales and purchases by Indians. Nothing in Public Law 83-280 purports to diminish that protection.

Appellant is a full-blood Indian and an enrolled member of the Colville Confederated Tribes doing business on trust land inside the Reservation. He not only received federal sanction to trade on the Reservation, . .t received two loans of federally-restricted trust funds, approved by the Area Director of the Bureau of Indian affairs, for purchase of cigarette inventory and for construction of his store building. Accordingly, appellant is a federal Indian trader and application of State excise tax to his retail business in this case is directly contrary to 25 U.S.C. § 261 *et seq.* and the *Warren* opinion.

In its opinion, the Washington Court noted that appellant held no federal Indian trader's license, that the Commissioner had never exercised his power to issue licenses in Washington[46] and concluded:[47]

> "Here, the Congress has not only failed to preempt the field of Indian trading . . . ."

Implicit in this language is the premise that where the Commissioner has failed to issue federal Indian traders' licenses, Congress' preemption over the field of Indian trading under 25 U.S.C. § 261 *et seq.* is somehow abandoned.

But *Warren, supra,* makes it clear that Congress has preempted the field of Indian trading, and the Supreme Court has established that even non-exercise of power by the Federal Government in a preempted field prohibits State interference without express Congressional authorization. *Guss v. Utah Labor Board,* 353 U.S. 1 (1957).

Furthermore, the Commissioner has now exercised his exclusive authority in the field of Indian trading in Washington by issuing to appellant a federal Indian trader's license on February 28, 1972, pursuant to the requirements of the Colville Tobacco Ordinance.

Thus, any future attempt by the State to levy taxes upon appellant's commercial activities would fly directly in the face of the *Warren* decision and the exclusive federal preemption of the field of Indian trading on the Colville Indian Reservation embodied in 25 U.S.C. § 261 *et seq.*

46. Single App., p. 52, n. 4
47. *Ibid,* p. 53

6. Imposition of State Excise Taxes on Indian Personal Property Is Prohibited by Public Law 83-280

Since it reads Public Law 83-280 as a congressional grant of power to the States to subject Indians to all State civil laws except those expressly excluded in the Act, the Washington Court holds that all *State excise tax laws* are applicable to appellant and his property.

The Washington Court examined the exclusion provisions of section 4(b) of the Act which read:

> "(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein."

and found no conflict between the State excise tax system and its enforcement provisions on the one hand, and the federal limitation on State jurisdiction on the other.

Of crucial importance, however, are the substantive provisions of State excise tax laws which provide remedies for default in payment of tax. RCW 82.32.210 provides in part:

> "If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff or any county of the state, commanding him *to levy upon and sell the real and/or personal property of the taxpayer*

found within his county, or such much thereof as may be necessary, for the payment of the amount of such warrant. . . ." (Emphasis supplied.)

RCW 82.32.240 provides in part:

"Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

"In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer, the claim of the state for said taxes and all increases and penalties thereon *shall be a lien upon all real and personal property of the taxpayer*, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state . . . ." (Emphasis supplied.)

These provisions establishing liens upon all real and personal property of appellant in the event of his nonpayment of tax and providing for its levy and sale are directly contrary to the holding of the Supreme Court in *Squire v. Capoeman, supra,* and the *United States v. Rickert,* 188 U.S. 432 (1903).

In *Rickert,* the State of South Dakota sought to impose its personal property tax on a cow, horses and two wagons supplied by the United States Government to a tribal Indian. Holding that this direct tax would not lie, the Supreme Court held at page 442:

"These suggestions entirely ignore the relation existing between the United States and the Indians. It is not a relation simply of contract . . . . The government would not adequately discharge its duty to these people if it placed its engagements with them upon the

> basis merely of contract, and failed to exercise any power it possessed to protect them in the possession of such improvements and personal property as were necessary to the enjoyment of the land held in trust for them. . . ."

Thus, the Supreme Court has prohibited taxation of income derived from trust land and has prohibited taxation of personal property used in the economic development of trust land. Both decisions rest squarely upon the trust status of Indian land and the federal protection carefully provided by Congress in sections 5 and 6 of the General Allotment Act.

Here, nonpayment of State excise tax by appellant would, under State law, result in a tax lien upon his personal or real property at the discretion of State taxing authorities, or a prior debt which would attach to his personal or real property upon its receipt in fee simple. This is precisely what Congress has declared may not be done by a State under the exclusion provisions of Public Law 83-280, and this is precisely what the Supreme Court has declared may not be done in *Squire* and *Rickert*.

The opinion of the Washington Court, therefore, imposing on Indians in Washington the entire structure of State excise taxes and laws governing their administration and imposition, has the inherent effect of encumbering Indian real and personal trust property, in violation of the express prohibition of section 4(b) of Public Law 83-280.

7. Federal Policy Regarding Indian Trust Land Prohibits State Taxation of Indians and Their Property and Commercial Activity on Indian Reservations

Land has always occupied a position of unique importance to the American Indian and remains the *sine qua*

non of Indian existence as a people. Accordingly, the single most important protection for the Indian is the trust status imposed upon Indian land by the Federal Government and the long-established federal policy protecting its use. The federal policy is to protect the Indian trust land and personal property and their use by providing financial advantages and thus to encourage Indians to become economically independent. *Squire v. Capoeman, supra.*

The financial advantages provided by federal policy are attainable only by maximization of the value of trust land through economic development, and extend to personal property used in connection with trust land as well as the land itself. *United States v. Rickert, supra.* In today's society, it is as much the governments' desire to foster successful business enterprises on Indian reservations as it is to encourage farming, ranching and fishing. *Makah v. Clallam County,* 73 Wn.2d 677, 686, 440 P.2d 442, 447 (1968).

So paramount is the federal policy and so closely tied to Indian trust land that it was specifically provided for in section 5 of the General Allotment Act, *supra,* and, as has been shown, specifically preserved intact in section 4(b) of Public Law 83-280:

> "Nothing in this section . . . shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto. . . ."

Since a central goal of the federal policy underlying the trust status of Indian land is profitability of Indian enterprises, it follows that the measure of the federal policy's success is the degree of economic improvement in the Indian's position.[48] State tax upon commercial activity

48. Comment, "Indian Taxation: Underlying Policies and Present Problems," 59 Cal. L. Rev. 1261, 1276 (1971)

or personal property on the Colville Indian Reservation diminishes its profitability and directly interferes with the central policy goal.

In *Federal Land Bank v. Board of County Commissioners,* 368 U.S. 146 (1961), the Supreme Court voided a county personal property tax upon mineral rights owned by the Federal Land Bank. The decision turned upon the fact that the federal purpose of the Bank was to provide agricultural loans at low interest rates which was partially accomplished by distributing profits to its shareholder-borrowers, and any reduction of profits interfered with optimal achievement of the Bank's governmental functions.

The purpose underlying federal Indian policy is analogous since it depends directly upon maximum profitability of Indian trust land. Providing economic aid to Indians through prohibition of State taxation of property used on trust land or commercial activity on trust land, is a federally protected governmental activity.

The significance of the *Squire* and *Rickert* decisions is that Indian use of trust land inside reservations of tribes with an effective tribal autonomy will be protected from State taxation, and the protection will encompass personal property used in connection with the trust land. The prohibition of State "regulation of the use" of Indian trust property in section 4(b) of Public Law 83-280 reflects Congress' intention that these Indian tax immunities continue, unaffected by the Act.

Consistent with the federal policy regarding Indian trust property is the Colville Tobacco Ordinance which establishes tribal tobacco outlets on trust allotments of individual Indian operators and provides that all cigarettes

purchased by the Colville Confederated Tribes with federally-restricted tribal funds are "federally-restricted tribal property owned and possessed by the Tribes until sale to the ultimate consumer."

The commercial activity engaged in by appellant is the most logical method of maximizing profitability of appellant's trust land within the city limits of East Omak. And with complete federal sanction, appellant's commercial activity becomes a federally protected governmental activity. Since the effect of the Washington Court's opinion is a direct reduction of maximum profitability of appellant's trust land, the opinion violates the federal policy regarding Indian trust property as spelled out in the *Squire* and *Rickert* decisions, and protected in the General Allotment Act and Public Law 83-280.

8. Application of State Excise Tax Violates Tribal Sovereignty of the Colville Confederated Tribes

While Congress has increasingly subjected Indian tribes to State laws, particularly through Public Law 83-280, one important limitation on State authority over Indian reservations remains: unless jurisdiction is expressly granted by the Federal Government, it is denied to the State in all matters that would interfere with a tribe's right of self-government.

This principle has been repeatedly upheld by the Supreme Court. In *Warren,* the Supreme Court stated at page 687 n. 3:

> "Certain state laws have been permited to apply to activities on Indian reservations, where those laws are specifically authorized by acts of Congress, or

> where they clearly do not interfere with federal policies concerning the reservations."

The inherent sovereign right of the Colville Confederated Tribes to regulate the use and disposition of property and commercial activity on the Colville Indian Reservation is preserved in Article V of the tribal Constitution:

> "(e) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the Reservation, or obtaining special rights or privileges, and the same may be applied to members of the Tribes provided such ordinances have been approved by a referendum of the Confederated Tribes."

The Tribes' sovereignty over commercial activity on the Reservation and their power to levy taxes result in a corollary immunity of such commercial activity from the myriad excise tax provisions of RCW, Chapter 82. In the face of this clear reservation of tribal sovereignty over commercial activity on the Reservation, Congress has not seen fit to grant specific taxing authority to the State of Washington.

Tribal sovereignty over commercial activity and taxation on the Reservation have been exercised through the Colville Tobacco Ordinance which makes sale and distribution of all tobacco products on the Reservation a tribal enterprise generating tax revenues for the tribal governmental entity.

According to the Washington Court, the State may impose a 17c per package State tax on cigarettes sold on the Reservation in addition to the 3c per package tribal tax. The total tax of 20c per package, higher than that

levied elsewhere within the State, would end all cigarette sales on the Reservation through tribal tobacco outlets.

Applying this principle generally, it is clear that imposition of *any* State excise tax on commercial activity on the Colville Indian Reservation results in the elimination of *any* tribal tax regulating the same commercial activity. And the ultimate effect of the opinion of the Washington Court is now obvious—it annihilates the sovereign power of the Colville Confederated Tribes to tax commercial activity on the Reservation.

In *Williams v. Lee,* 358 U.S. 217 (1959), the Supreme Court considered the question of civil jurisdiction of Arizona courts over two Navajo Indians in an action to collect for goods sold to them from a federal trader on the Navajo Reservation. The Supreme Court applied the following test:

> "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U.S. at 220.

In this case, no specific act of Congress limits either the jurisdiction of the Colville Confederated Tribes over commercial activities or limits their taxing power on the Colville Indian Reservation. The opinion of the Washington Court not only infringes upon these two basic sovereign powers of the Colville Confederated Tribes but holds that they were impliedly taken away by Congress in Public Law 83-280.

The Washington Court points with alarm to the volume of appellant's sales and notes a large resulting tax loss to the State. Since the Washington State Legislature in 1972 legalized possession by each citizen of two cartons of un-

taxed cigarettes, whether purchased from military commissaries or from the neighboring States of Idaho and Oregon or from Indian sellers, this specter of State "tax loss" evaporates.

9. Congressional Acts and Other Indian Protections Are Not Repealed or Destroyed by Implication

The opinion of the Washington Court that Public Law 83-280 has repealed federal Indian trader statutes and destroyed Indian tax protections inherent in federal policies regarding Indian trust property as well as the sovereign tribal rights to regulate commerce and levy taxes, *all* by implication, is directly contrary to a well-established doctrine of law of the Supreme Court.

The doctrine holds that whenever possible, federal statutes are *not* to be deemed repealed by implication. In *Frost v. Wenie,* 157 U.S. 46 (1895), the Supreme Court held:

> "It is well settled that repeals by implication are not to be favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—*no purpose to repeal being clearly expressed or indicated*—is, if possible, to give effect to both. In other words, it must not be supposed that the legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and, therefore, to displace the prior statute." (Emphasis supplied.) 157 U.S. at 58.

An analysis of Public Law 83-280 reveals no purpose, clearly expressed or indicated, to repeal or in any way abrogate the federal Indian trader statutes, the tax immunities of Indians and their property and commercial activ-

ity on Indian reservations, or sovereign powers embodied in the tribal constitution and by-laws. Nor is the language of Public Law 83-280 so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the subject of Indian trading or Indian taxation in any way whatsoever.

All of the statutes, tax immunities, federal policies, and sovereign tribal powers at stake can be given effect by the Supreme Court as well as Public Law 83-280. The only reasonable reading of the Act, in light of the doctrine that statutes be liberally construed to protect Indian rights with ambiguities resolved in the Indians' favor, is that none of these protections were affected by the Act and that the exclusion clauses indicate *only* what Public Law 83-280 does not do.

This conclusion is bolstered by 59 Cal. L.Rev. 1261, in which the author states at page 1267 that *Kirkwood v. Arenas,* 243 F.2d 863 (9th Cir., 1957), is "strong support" for the proposition that:

> "This clause clearly expresses Congress' intent that Public Law 280 should not expand state taxation of trust or restricted Indian real or personal property. Since the purpose of many Indian tax privileges is either to maximize the value of Indian property in fulfillment of the commitment to economic development or to recognize tribal sovereignty, *Public Law 280 should not be read to expand state power over other Indian-related tax exemptions; to do so would be inconsistent with federal policy.*" (Emphasis supplied.)

A congressional act, such as Public Law 83-280, imposing some general measure of State control over Indians, does not repeal or destroy by implication federal protections afforded to Indians. Specific language of repeal is

required in consonance with the long standing doctrines disfavoring repeal of federal statutes by implication and resolving all ambiguities in favor of Indians.

CONCLUSION

The Colville Confederated Tribes have the sovereign powers to regulate commerce on their Reservation and to levy taxes on such commerce except as expressly limited by Congress. Enactment by Congress of Public Law 83-280 enabled States to take jurisdiction of civil causes of action arising on Indian reservations but did not constitute a grant of taxing powers to States over Indians and their property and commercial activity on Indian reservations. Application of Washington excise taxes to appellant and his business on the Colville Indian Reservation is directly contrary to the federal Indian trading statutes and appellant's status as a federal Indian trader, the General Allotment Act of 1887, Public Law 83-280, the *Warren*, *Rickert* and *Squire* decisions of the Supreme Court, federal policies regarding Indian trust property and its use, and the sovereign powers of the Colville Confederated Tribes.

For these substantial reasons, the decision of the Washington Supreme Court must be reversed.

DATED this 1st day of August, 1972.

Respectfully submitted,

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APPENDIX A

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

United States Constitutional Provision:

United States Constitution, Art. I §8, cl. 2

"The Congress shall have Power . . . to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

United States Statutes:

25 U.S.C. §§261-264:

§261

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. Aug. 15, 1876, c. 289, §5, 19 Stat. 200.

§262

Any person desiring to trade with the Indians on any Indian reservation shall, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians. Mar. 3, 1901, c. 832, §1, 31 Stat. 1066; Mar. 3, 1903, c. 994, §10, 32 Stat. 1009.

§263

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be re-

jected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued. R.S. §2132.

§264

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person, shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commission of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. R.S. 2133; July 31, 1882, c. 360, 22 Stat. 179.

25 U.S.C. §§1321-1326:

§1321

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the

same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation therof.

Pub. L. 90-284, Title IV, §401, Apr. 11, 1968, 82 Stat. 78.

§1322

(a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging

to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Pub. L. 90-284, Title IV, §402, Apr. 11, 1968, 82 Stat. 79.

§1323

(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

Pub. L. 90-284, Title IV, §403, Apr. 11, 1968, 82 Stat. 79.

§1324

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitu-

tion or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

Pub. L. 90-284, Title IV, §404, Apr. 11, 1968, 82 Stat. 79.

§1325

(a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purpose of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

Pub. L. 90-284, Title IV; §405, Apr. 11, 1968, 82 Stat. 80

§1326

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country

accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

Pub.L. 90-284, Title IV, § 406, Apr. 11, 1968, 82 Stat. 80.

Federal Regulations:

25 C.F.R. §251:

§251.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§251.3 Forfeiture of goods.

Any person other an an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided,* That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further,* That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affiairs. (R.S. 2133, as amended; 25 U.S.C. 264.)

25 C.F.R. §91.12, §91.13:

§91.12 Tribal funds.

(a) Tribal funds may be advanced to corporations and unincorporated tribes and bands, when authorized by Congress, upon request of the governing body and approval by the Commissioner, for the establishment of enterprises and for relending in accordance with paragraphs (b) and (c) of this section and § 91.13. No interest shall be paid to the United States on such funds.

(b) Support loans may be made to old, indigent, or disabled members, and loans may be made for burial expenses of members, when there is reasonable assurance that the loans will be repaid. Interest may be waived on such loans.

(c) Individuals need not be of at least one-quarter degree of Indian blood in order to receive loans of tribal funds, but must be members of the corporation, tribe, or band to which the funds belong.

(d) Failure of a corporation or unincorporated tribe or band to use tribal funds advanced under authority of paragraph (a) of this section in accordance with the regulations and the purposes for which requested, shall be grounds for any one or all of the following steps to be taken by the Commissioner:

(1) Discontinue further advance of funds requested.

(2) Require that the entire amount advanced be returned to the Treasury.

(3) Prevent further disbursement of tribal funds under the control of the corporation, tribe, or band.

(4) Withdraw any unobligated funds from the corporation, tribe, or band and deposit the same in the Treasury.

(5) Require that all repayments on loans made by the corporation, tribe, or band, be used to replace funds ad-

vanced to the corporation, tribe, or band from the Treasury.

(6) In the case of enterprises operated with tribal funds, to liquidate or operate or arrange for the operation of the enterprise, until all tribal funds advanced to the corporation, tribe, or band have been replaced in the Treasury, or until the Commissioner has received acceptable assurance that the funds will be replaced, or that the enterprise will be operated in a manner satisfactory to him.

§91.13 Relending by borrower.

(a) Funds loaned by the United States to a corporation, tribe, band, or credit association, may be reloaned by it, with the approval of the Commissioner or his authorized representative, but the Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Such loans shall be secured by such securities as the lender and the approving officer may require. Individually owned trust or restricted land may be mortgaged for such loans in accordance with § 121.52 of this chapter. All securing documents shall be filed or recorded in accordance with State or Territorial law.

(c) Unless otherwise authorized by the Commissioner in the case of particular loans, title to property purchased with such loans received from such relending organizations shall be taken in the name of the borrower.

Public Law 83-280, 67 Stat. 588 (1953).

AN ACT

To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

Be it enacted by the Senate and House of Represen-

tatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2, Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§1162. State jurisdiction over offenses committed by or against Indians in the Indian country.

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State, shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian Country Affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject

to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3 Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§1360. State civil jurisdiction in action to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of Indian Country Affected

California.....All Indian country within the State

Minnesota.....All Indian country within the State, except the Red Lake Reservation

Nebraska.....All Indian country within the State

Oregon.....All Indian country within the State, except the Warm Springs Reservation

Wisconsin.....All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their state constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That

the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their state constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

Executive Order:

Executive Order Dated July 2, 1872

EXECUTIVE MANSION
Washington, July 2, 1872

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River on the west by the Okanogan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

U. S. GRANT

A-13

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONSTITUTION AND BY-LAWS
OF THE
CONFEDERATED TRIBES
OF THE COLVILLE RESERVATION

APPROVED FEBRUARY 26, 1938

PREAMBLE

We, the people of the Colville Reservation in the State of Washington, in order to form a recognized representative council to handle our Reservation affairs, and in order to improve the economic condition of ourselves and our posterity, do hereby establish this Constitution and By-Laws.

ARTICLE I — PURPOSE

The object and purpose shall be to promote and protect the interests of the Colville Indians and to preserve peaceful and cooperative relations with the Office of Indian Affairs, its officers and appointees.

ARTICLE II — GOVERNING BODY

Section 1. The governing body of the Confederated Tribes of the Colville Reservation shall be a council known as the Colville Business Council.

Section 2. The Business Council shall consist of fourteen (14) Councilmen to be elected from the districts as set forth hereafter.

Section 3. The representation from the districts hereby designated shall be as follows: Inchelium district, four councilmen; Nespelem district, four councilmen; Omak district, four councilmen; Keller district, two councilmen.

Section 4. The Business Council shall have the power to change the districts and the representation from each district based upon community organization or otherwise, as deemed advisable, such change to be made by ordinance,

but the total number of councilmen shall not be changed, as provided for in Section 2 of Article II of this Constitution.

Section 5. The Business Council so organized shall elect from within its own number (1) a chairman; (2) a vice-chairman; and from within or without its own membership (3) a secretary; and may appoint such other officers and committees as may be deemed necessary.

Section 6. No person shall be a candidate for membership in the Business Council unless he shall be a member of the Confederated Tribes of the Colville Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election, and be at least twenty-five (25) years of age.

Section 7. The Business Council of the Confederated Tribes of the Colville Reservation shall be the sole judge of the qualifications of its members.

ARTICLE III — NOMINATIONS AND ELECTIONS

Section 1. The first election of the Business Council under this Constitution shall be called, held and supervised by the Superintendent of the Reservation and the delegates who were selected by the Districts and who prepared this constitution, within sixty days after its ratification and approval.

At the first election, the two candidates receiving the highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve two years; the candidate receiving the highest number of votes in the Keller district shall serve two years. The two candidates receiving the next highest number of votes in the Inchelium, Nespelem, and Omak districts shall serve one year; and the candidate receiving the next highest number of votes in the Keller district shall serve one year. Thereafter, elections for the Business Council shall be held every year and shall be called at least sixty days before expiration of the term of office.

The terms of office of a councilman shall be for a period of two years, unless otherwise provided herein.

Section 2. The Business Council, or an election board appointed by the Council, shall determine rules and regulations governing all elections.

Section 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Business Council within the district of his residence, in accordance with Section 6 of Article II.

Section 4. The Business Council, or a board appointed by the Business Council, assisted by the Superintendent of the Reservation, shall certify to the election of the Business Council members within five days after election returns.

Section 5. Any enrolled member of the Confederated Tribes of the Colville Reservation who is twenty-one (21) years of age or over shall be entitled to vote.

ARTICLE IV — VACANCIES AND REMOVAL FROM OFFICE

Section 1. If a councilman or official shall die, resign, be removed or recalled from office, permanently leave the Reservation, or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State, or Federal Court, the Business Council shall declare the position vacant and the district affected shall elect to fill the unexpired term. (*This Section amended. See Amendment II.*)

Section 2. The Business Council may by majority vote expel any member for neglect of duty or gross misconduct. Before any vote for expulsion is taken in the matter, such member or official shall be given a written statement of the charges against him at least five days before the meeting of the Business Council before which he is to appear, and he shall be given an opportunity to answer any and all charges at the designated Council meeting. The decisions of the Business Council shall be final.

Section 3. Upon receipt of a petition signed by one-third (⅓) of the eligible voters in any district calling for the recall of any member of the Council representing said district, it shall be the duty of the Council to call an election on such recall petition.

No members may be recalled in any such election unless at least 40% of the legal voters of the district shall vote in such election. *(This Section amended. See Amendment IV.)*

ARTICLE V — POWERS AND DUTIES OF THE COUNCIL

Section 1. The Business Council shall have the following powers, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached By-Laws;

(a) To confer with the Commissioner of Indian Affairs or his representatives and recommend regarding the uses and disposition of tribal property; to protect and preserve the Tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian Arts, crafts, and culture; to administer charity, to protect the health, security, and general welfare of the Confederated Tribes.

(b) To exclude from the restricted lands of the Reservation persons not legally entitled to reside thereon, under ordinances which may also be subject to review by the Secretary of the Interior.

(c) To recommend and help to regulate the inheritance of real and personal property, other than allotted lands, within the Colville Reservation.

(d) To regulate the domestic relations of members of the Confederated Tribes.

(e) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon non-members doing business within the Reservation, or obtaining special rights or privileges, and the same may be applied to mem-

bers of the Tribes provided such ordinances have been approved by a referendum of the Confederated Tribes.

Article VI — Amendments

This Constitution and By-Laws may be amended by a majority of the qualified voters of the Confederated Tribes voting at an election called for that purpose. Provided, that the Tribal Council shall have adopted the amendment by a two-thirds (⅔) vote, but no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs.

CONSTITUTIONAL AMENDMENTS

Amendment I

Article II, Section 1, By-Law: Time and Place of Meeting and Procedure—Regular meetings of the Business Council shall be held on the second Thursday of July, October, January and April, at Nespelem, Washington, at a designated building or hall. (*Adopted by Confederated Tribes June* 15, 1946. *Approved by Acting Commissioner of Indian Affairs May* 8, 1947.)

Amendment II

Article IV, Section 1. Vacancies and Removal From Office.—If a councilman or official shall die, resign, be removed or recalled from office, permanently leave the reservation, or shall be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the Business Council shall declare the position vacant and appoint a member from the district affected to fill the unexpired term. (*Adopted by Confederated Tribes June* 15, 1946. *Approved by Acting Commissioner of Indian Affairs* May 8, 1947.)

Amendment III

Article VII, Membership of the Confederated Tribes of the Colville Reservation.—There shall be added a

new provision governing membership of the Confederated Tribes of the Colville Reservation which shall read as follows:

Section 1.—The membership of the Confederated Tribes of the Colville Reservation shall consist of the following:

(a) All persons of Indian blood whose names appear as members of the Confederated Tribes on the official census of the Indians of the Colville Reservation as of January 1, 1937, provided that, subject to the approval of the Secretary of the Interior corrections may be made in said roll within two years from the adoption and approval of this amendment.

(b) All children possessing one-fourth or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining a permanent residence on the Colville Indian Reservation.

(c) All children possessing one-fourth or more Indian blood, born after January 1, 1937, to any member of the Confederated Tribes of the Colville Reservation maintaining residence elsewhere in the continental United States, provided that the parent or guardian of the child indicate a willingness to maintain tribal relations and to participate in tribal affairs. To indicate such willingness to maintain tribal affiliation, the parent or guardian shall, within six months after the birth of the child submit a written application to have the child enrolled. The application shall be accompanied by the child's birth certificate together with any other evidence as to the eligibility of the child for enrollment in the confederated Tribes of the Colville Reservation. If the certificate and application are not filed within the designated time, the child will not be enrolled.

Section 2. The Business Council of the Confederated Tribes shall have power to prescribe rules and regulations governing future membership in the tribes, including the

adoption of members and loss of membership, provided:

(a) That such rules and regulations shall be subject to the approval of the Secretary of the Interior.

(b) That no person shall be adopted who possesses less than one-fourth degree Indian blood.

(c) That any member who takes up permanent residence or is enrolled with a tribe, band or community of foreign Indians shall lose his membership in the Colville Tribes.

Alien Indians may be deleted from the rolls after they have been given an opportunity to be heard in their own behalf. The tribe shall also take appropriate action to correct the existing tribal roll and, if necessary, delete from the rolls alien Indians whose names appear on the rolls of the Confederated Tribes and who have abandoned tribal relations. The Colville Confederated Tribes shall not deprive anyone of vested property rights, such as allotments or inherited interests. (*Adopted by Confederated Tribes May 20, 1949. Approved by Commissioner of Indian Affairs April 14, 1950.*)

AMENDMENT IV

That Section 3, of ARTICLE IV, VACANCIES AND REMOVAL FROM OFFICE, is hereby amended to read:

Section 3. By the eligible voters of any district filing with the Colville Business Council a typewritten or printed petition, signed by at least one-third (⅓) the number of those who were eligible to vote in the last preceding election, charging that a council member representing such district has violated his oath of office or committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, a demand may be made for a recall of such council member provided the act or acts complained of are set forth in concise language and the signature of each petitioner has alongside it those of two witnesses thereto and the petitioner's post office address.

The Council shall, at its next meeting after the filing of such petition, determine whether the petition as filed meets the requirements of this section of the Constitution and if it finds that such requirements have been complied with, shall call a special election on such recall petition, said election to be held not sooner than 30 days after the action of the Council on the petition nor more than 60 days after the date of such Council action.

The ballot to be voted on at such special election shall contain the charging part of the petition hereinabove referred to.

No member may be recalled at any such election unless at least forty percent (40%) of the eligible voters of the district shall have voted at such election and unless a majority of those voting vote in favor of recall. (*Adopted by Confederated Tribes May* 9, 1959. *Approved by Acting Commissioner of Indian Affairs July* 2, 1959.)

Amendment V

There shall be added to Amendment III, Membership of the Confederated Tribes of the Colville Reservation, a new provision governing membership of the said tribes which shall read as follows:

Section 3. After July 1, 1959, no person shall be admitted to membership in the Confederated Tribes of the Colville Reservation unless such person possesses at least one-fourth (¼) degree blood of the tribes which constitute the Confederated Tribes of the Colville Reservation. (*Adopted by the Colville Confederated Tribes on* May 9, 1959. *Approved by the Acting Commissioner of Indian Affairs July* 2, 1959).

BY-LAWS OF THE CONFEDERATED TRIBES

Article I — The Business Council

Section 1. *Chairman of the Business Council.* The Chairman of the Business Council shall preside over all meetings of the Business Council. He shall perform all duties of the

Chairman and exercise authority delegated to him by the Business Council. He shall vote only in the case of a tie.

Section 2. Vice-Chairman of the Business Council. The Vice-Chairman of the Business Council shall assist the Chairman when called upon to do so. In the absence of the Chairman, he shall preside. When so presiding, he shall have the rights, privileges and duties as well as the responsibilities of the Chairman.

Section 3. Secretary of the Business Council. The Secretary of the Business Council shall conduct all correspondence and keep a complete and accurate record of all matters transacted at Council Meetings. It shall be his duty to submit promptly to the Superintendent of the jurisdiction copies of all minutes of regular and special meetings of the Business Council and the Tribes.

Section 4. Appointive Officers. The duties of all appointive committees and officers appointed by the Colville Business Council shall be clearly defined by resolution of the Business Council at the time of their creation or appointment. Such committees and officers shall report from time to time as required, to the Business Council and their activities and decisions shall be subject to review by the Business Council upon petition of any person aggrieved.

Article II — Time and Place of Meetings and Procedure

Section 1. Regular meetings of the Business Council shall be held on the second Friday of July, October, January and April, at Nespelem, Washington, at a designated building or hall. (*This section amended. See Amendment I.*)

Special meetings may be called by written notice signed by the Chairman or by a majority of the Business Council members, and when so called the Business Council shall have power to transact business as in regular meetings.

Section 2. — Quorum. No business shall be transacted unless a quorum is present. A quorum shall consist of eight (8) councilmen.

Section 3. — *Order of Business.* The following order of business is established for all meetings:

1. Call to order by the Chairman.
2. Roll call.
3. Ascertainment of a Quorum.
4. Reading of the minutes of the last meeting.
5. Adoption of the minutes by a vote or common consent.
6. Unfinished business.
7. New Business.
8. Adjournment.

Section 4. — *Report of Meetings.* It shall be the duty of each member of the Business Council to make reports concerning the proceedings of the Business Council to the members of the district from which he is elected.

Article III — Ratification of Constitution and By-Laws

This Constitution and By-Laws shall be in full force and effect whenever a majority of the adult voters of the Confederated Tribes voting at an election called by the Commissioner of Indian Affairs, in which at least thirty percent (30%) of the eligible voters vote, shall have ratified such Constitution and By-Laws and the Commissioner of Indian Affairs shall have approved same.

CERTIFICATION OF ADOPTION

Pursuant to the request of a majority of the Indians of the Colville Reservation to obtain for themselves a representative organization, this Constitution and By-Laws was duly submitted by the Commissioner of Indian Affairs to the adult Indians living on the Reservation for ratification and was on February 26, 1938, duly ratified by a vote of 503 for, and 76 against in an election in which over 30 percent of those entitled to vote cast their ballots.

/Signed/ Harvey K. Meyer
Superintendent, Colville Agency

/Signed/ Gus Whitelaw
Chairman,
Constitutional Committee

This is a true and correct copy of the Constitution and By-Laws of the Confederated Tribes of the Colville Reservation. Issued: August 1, 1967

/Signed/ HARRY OWHI
Executive Secretary

RESOLUTION 1972-375
Colville Tobacco Ordinance as Amended

WHEREAS, the Colville Business Council is the duly constituted governing body of the Confederated Tribes of the Colville Reservation, and

WHEREAS, under the Constitution and Bylaws of the Tribes the Colville Business Council is charged with the duty of protecting the health, security and general welfare of the Colville Confederated Tribes, and

WHEREAS, by virtue of their status as Indian tribes, the Colville Confederated Tribes are authorized by federal law to possess unstamped cigarettes and other tobacco products on the Colville Indian Reservation and to regulate their sale and distribution, and

WHEREAS, the Colville Business Council deems it essential to the health, security and general welfare of the Colville Confederated Tribes to enact a comprehensive tobacco ordinance regulating sale and distribution of cigarettes and other tobacco products and levying an excise tax upon their distribution on the Colville Indian Reservation,

NOW, THEREFORE, the Colville Business Council does hereby promulgate and enact the following ordinance:

AN ORDINANCE

Governing sale, distribution and
taxation of tobacco products
within the Colville Indian Reservation

Section 1. Title.

This ordinance shall be known as the Colville Tobacco Ordinance.

Section 2. Definitions.

As used in this ordinance, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated:

(1) "Tribes" shall mean the Confederated Tribes of the Colville Indian Reservation.

(2) "Council" shall mean the Colville Business Council.

(3) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(4) "Tobacco Products" shall mean cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(5) "Retail Selling Price" shall mean the ordinary, customary or usual price paid by the consumer for each tobacco product, less the tax levied by this ordinance.

(6) "Wholesale Distribution Price" shall mean the price paid for each tobacco product by the Tribes together with all freight charges and other expenses incurred by the Tribes in their receipt and distribution.

(7) "Tobacco Outlet" shall mean a licensed tribal retail sales business selling tobacco products on trust land in the Colville Indian Reservation.

(8) "Operator" shall mean an enrolled member of the Colville Confederated Tribes licensed by the Tribes to manage a tobacco outlet.

Section 3. Establishment of Tobacco Outlets.

The Council shall establish one or more tobacco outlets

within the Colville Indian Reservation as the Council in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.

Section 4. Nature of Outlet.

Each tobacco outlet established hereunder shall be a tribal tobacco outlet and shall be managed by the Tribes by an operator pursuant to a license granted by the Council hereunder, and shall also be managed pursuant to a Federal Indian Trader's License as provided in Section 7 hereof.

Section 5. Application for Tobacco Outlet License.

Any enrolled member of the Colville Confederated Tribes may apply upon an application form provided by the Council for a tobacco outlet license. The application shall state the name and address of the applicant and shall be signed by the applicant under oath.

Section 6. Tobacco Outlet License.

Upon approval of an application, the Council shall issue the applicant a tobacco outlet license for a one-year period which shall entitle the operator to establish and maintain one tobacco outlet on the Colville Indian Reservation. The license shall be renewable in such manner as the Council shall prescribe and shall be nontransferable.

Section 7. Traders License.

No tobacco outlet license shall be issued to an operator until he has obtained a Federal Indian Trader's License from the Superintendent of the Colville Indian Agency. Revocation of the Federal Indian Trader's License shall be grounds for revocation of the operator's tobacco outlet license.

Section 8. Excise Tax Imposed.

There is levied and there shall be collected as hereinafter provided, a tax upon the distribution of all cigarettes sold or distributed hereunder in the amount of three cents per package. The Council may levy an additional tax

upon the distribution of cigarettes and other tobacco products as it deems desirable.

The excise tax levied hereunder shall be a tax upon distribution of cigarettes and other tobacco products by the Tribes only and shall not constitute an assessment or license fee upon enrolled members of the Tribes doing business within the reservation or obtaining special rights or privileges. The excise tax levied hereunder shall be added to the retail selling price of tobacco products sold to the ultimate consumer.

Section 9. Purchase by Tribes.

All tobacco products purchased by the Tribes pursuant hereto shall be purchased with federally-restricted tribal funds.

Section 10. Wholesale Distribution.

Wholesale distribution of tobacco products by the Tribes to a tobacco outlet shall be upon a cash basis for the wholesale distribution price which shall have added to it the excise tax levied in Section 8 hereof.

Section 11. Tobacco Products Federally Restricted Tribal Property.

The entire stock of tobacco products distributed hereunder shall remain federally-restricted tribal property owned and possessed by the Tribes until sale to the ultimate consumer. Payment by the operator of the wholesale distribution price as provided in Section 10 hereof shall entitle the operator to custody of distributed tobacco products for sale to the ultimate consumer, at the operator's sole risk in the event of any loss whatsoever.

Section 12. Remuneration to Operator.

As remuneration for managing a tobacco outlet, an operator shall be entitled to the gross revenue derived from sale of tobacco products distributed hereunder in excess of the wholesale distribution price and the excise tax levied hereunder.

Section 13. Restricted Sales to Non-Indians.

An operator may not sell more than two cartons of cigarettes per sale to a non-Indian. The Council may restrict sales of other tobacco products to non-Indians as it deems necessary.

Section 14. Restricted Sales to Minors.

An operator may not sell any tobacco products to any person under the age of 18 years.

Section 15. Other Business by Operator.

An operator may conduct another business simultaneously with managing a tobacco outlet for the Tribes. The other business may be conducted on the same premises and the operator shall not be required to maintain separate books of account for the other business.

Section 16. Tribal Immunity—Liability—Credit.

An operator shall not attempt or be authorized to waive the sovereign immunity of the Tribes from suit, nor shall such operator attempt or be authorized to create any liability on behalf of the Tribes or to utilize tribal credit.

Section 17. Operating Without License.

No person shall operate a tobacco outlet on the Colville Indian Reservation without having in effect a valid tobacco outlet license issued pursuant hereto.

Section 18. Purchases.

An operator shall purchase all tobacco products sold in his tobacco outlet from the Tribes.

Section 19. Liability Insurance.

An operator shall maintain liability insurance upon his premises in the sum of not less than $25,000.00.

Section 20. Revocation of Tobacco Outlet License.

Failure of an operator to abide by the requirements of this ordinance and any additional requirement imposed by the Council will constitute grounds for revocation of the

operator's tobacco outlet license as well as enforcement of the penalties provided in Section 21 below.

Section 21. Violation—Penalties.

Any person violating the provisions of this ordinance shall be guilty of an offense and subject to a fine in Tribal Court of not less than $50.00 nor more than $250.00 and forfeiture of all of the Tribes' remaining stock of tobacco products distributed hereunder and situate in his tobacco outlet. The tribal law enforcement officers shall be empowered to seize forfeited tobacco products.

Section 22. Separability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or application of the provision to other persons or circumstances is not affected.

THE FOREGOING was duly enacted by the Colville Business Council meeting in special session this 23rd day of June, 1972, at the Colville Indian Subagency, Nespelem, Washington, by a vote of 10 FOR and 0 AGAINST, under authority contained in Article V, Section 1(a) of the Contitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

/s/ MEL TONASKET
Mel Tonasket, Chairman
Colville Business Council

State Statutes:

Revised Code of Washington:

82.24.050 Duty of retailer

Every retailer shall, within a reasonable time after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps

affixed to represent the tax imposed herein: *Provided*, That those articles to which stamps have been properly affixed by a wholesaler or another retailer may be retained by any retailer, and that those articles intended for sale to qualified purchasers may be retained by federal instrumentalities and Indian tribal organizations, without affixing the stamps required by this chapter. [Amended by Laws 1st Ex Sess 1969 ch 214 § 2.]

82.24.110 Other offenses—Penalty. Each of the following acts is a gross misdemeanor and punishable as such:

(1) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(2) To use, or have in possession knowingly or intentionally any forged or counterfeit stamps;

(3) For any person other than the tax commission or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(4) To violate any of the provisions of this chapter;

(5) To violate any lawful rule or regulation made and published by the tax commission;

(6) To use any stamps more than once;

(7) To refuse to allow the tax commission or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(8) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein [illegible]d, unless the same have the proper stamps attached;

(9) For any person to make, use, or prevent or exhibit to the tax commission or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(10) For any wholesaler or retailer or his agents or employees to fail to produce on demand of the tax commission all invoices of all the articles herein taxed or stamps bought by him or received in his place of business within five years prior to such demand unless he can show by satisfactory proof that the non-production of the invoices was due to causes beyond his control;

(11) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein.

All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses herein described shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer violating the provisions thereof.

82.32.030 Registration certificates. If any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he shall, whether taxable or not, under such rules and regulations as the commission shall prescribe, apply for and obtain from the commission, upon payment of a fee of one dollar, a registration certificate. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted

with the public shall be required, but, for such additional certificates no fee shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the tax commission deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the commission the existing certificate, and a new certificate will be issued for the new place of business free of charge. No person shall engage in any business taxable hereunder without being registered in compliance with the provisions of this section, except that the commission, by general regulation, may provide for the issuance of certificates of registration to temporary places of business without requiring the payment of any fee.

82.32.210 Tax warrant—Levy upon property—Revocation of certificate of registration

If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant, together with interest thereon at the rate of one percent of the amount of such warrant for each thirty days or portion thereof after the date of such warrant, plus the cost of executing the warrant, and return the warrant to the commission and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. If, however, the commission believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may

declare the tax or penalty to be immediately due and payable and may issue a warrant immediately.

If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, or if any taxpayer shall, for three consecutive reporting periods, be delinquent in the transmission to the commission of retail sales tax collected by him, the tax commission may by order issued under its official seal, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if such order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the commission have been entered, and until the taxpayer has deposited with the commission such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the commissioner may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer. [Amended by Laws 1st Ex Sess 1967 ch 89 §3, effective June 1, 1967.]

82.32.240 Tax constitutes debt — Priority of Lien. Any tax due and unpaid and all increases and penalties thereon, shall constutute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and per-

sonal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the tax commission of such administration, receivership or assignment within thirty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: *Provided,* That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon.

82.32.290 Unlawful acts—Penalties. It shall be unlawful for any person to engage in business without having obtained a certificate of registration as provided herein; or to engage in business after his certificate of registration has been revoked by order of the tax commission; or to tear down or remove any order or notice posted by the commission; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof; or for any person to aid or abet another in any attempt to evade the payment of such tax or any part thereof; or for the president, vice president, secretary, treasurer, or other officer of any company to make or permit to be made for any company any false return, or any false statement in any return, with intent to evade payment of any tax here-

under; or for the president, vice president, secretary, treasurer, or other officer of any company to carry on the business of any company which has not obtained a certificate of registration or whose certificate of registration has been revoked by order of the commission; or for any purchaser to fraudulently sign a resale certificate without intent to resell the property purchased; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the commission or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the commission or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor.

In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

Washington Laws, 1972 1st Ex. Sess.

CHAPTER 157

[Engrossed House Bill No. 44]

TAX ON CIGARETTES

AN ACT Relating to revenue and taxation; amending section 28A.47.440; chapter 223, Laws of 1969 ex. sess. as amended by section 1, chapter 70, Laws of 1971 ex. sess., and RCW 28A.47.440; amend-

ing section 2, chapter 272, Laws of 1959 as amended by section 2, chapter 299, Laws of 1971 ex. sess. and RCW 73.32.130; amending section 82.24.020, chapter 15, Laws of 1961, as last amended by section 13, chapter 299, Laws of 1971 ex. sess. and RCW 82.24.020; amending section 82.24.080, chapter 15, Laws of 1961 and RCW 82.24.080; amending section 82.24.130, chapter 15, Laws of 1961 and RCW 82.24.130; adding new sections to chapter 15, Laws of 1961 and to chapter 82.24 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 28A.47.440, chapter 223, Laws of 1969 ex. sess. as amended by section 1, chapter 70, Laws of 1971 ex. sess. and RCW 28A.47.440 are each amended to read as follows:

In addition to the taxes levied by RCW 73.32.130 and 82.24.020, there is levied and shall be collected by the department of revenue from the persons mentioned in and in the manner provided by chapter 82.24 RCW, as now or hereafter amended, an excise tax upon the sale, use, consumption, handling, *possession* or distribution of cigarettes in an amount equal to the rate of one-half mill per cigarette, but the provisions of RCW 82.24.070 allowing dealers' compensation for affixing stamps shall not apply to this additional tax. Instead, wholesalers and retailers subject to the provisions of chapter 82.24 RCW shall be allowed as compensation for their services in affixing the stamps for the additional tax required by this section a sum equal to one-half of one percent of the value of the stamps for such additional tax purchased or affixed by them. Wholesalers and retailers subject to the payment of this tax may, if they wish, absorb such additional tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

Revenues derived from the tax imposed by this section shall be transmitted by the department of revenue to the state treasurer in accordance with the provisions of RCW 82.32.320, to the credit of the public schools building bond redemption fund. The amount so deposited in the aforesaid fund shall be devoted exclusively to payment of interest on and to retirement of the bonds authorized by RCW 28A.47.420.

As additional security for the payment of the bonds herein authorized, all revenues derived from the tax imposed by RCW 82.24.020 over and above the amount required by RCW 73.32.130 to be paid into and retained in the war veterans' compensation bond retirement fund shall be paid into the public schools building bond redemption fund and shall be devoted exclusively to the payment of interest on and to retirement of the bonds authorized by RCW 28A.47.420: PROVIDED, That whenever the receipts into the public schools building bond redemption fund from all sources during any one year exceed the annual amounts required for debt service, the balance shall be transferred by the state treasurer to the state general fund.

Sec. 2. Section 2, chapter 272, Laws of 1959 as amended by section 2, chapter 299, Laws of 1971 ex. sess. and RCW 73.32.130 are each amended to read as follows:

For the purpose of creating the fund for the retirement of such bonds upon maturity and the payment of interest thereon as it falls due, all proceeds hereafter received from the excise tax on cigarettes imposed by chapter 82.24 as now or hereafter amended, shall, so long as any part of principal or interest of the bonds herein provided for remains outstanding, be paid in to the war veterans' compensation bond retirement fund hereinafter provided for.

In addition thereto, there is hereby levied and there shall be collected by the department of revenue from the persons mentioned in and in the manner provided by chapter

82.24, as now or hereafter amended, an excise tax upon the sale, use, consumption, handling, *possession* or distribution of cigarettes in an amount equal to the rate of one mill per cigarette, but the provisions of RCW 82.24.070 allowing dealers' compensation for affixing stamps shall not apply to this additional tax. Instead, wholesalers and retailers subject to the provisions of chapter 82.24 shall be allowed as compensation for their services in affixing the stamps for the additional tax required by this section a sum equal to one percent of the value of the stamps for such additional tax purchased or affixed by them.

All money derived from such tax shall be paid to the state treasurer and credited to a special trust fund to be known as the war veterans' compensation bond retirement fund, which shall be kept segregated from all money in the state treasury and shall, while any of the bonds herein authorized or any interest thereon remain unpaid, be available solely for the payment thereof.

Whenever the receipts into the war veterans' compensation bond retirement fund during any year exceed the annual amounts required for debt service, the balance shall be transferred by the state treasurer to the state general fund, and whenever there has accumulated in the war veterans' compensation bond retirement fund a sum in excess of the amount required in any year, as determined by the state finance committee, to meet obligations during that year for bond retirement and interest, the state treasurer shall transfer from such fund to the state general fund all money in excess of such amount.

Sec. 3. Section 82.24.020, chapter 15, Laws of 1961, as last amended by section 13, chapter 299, Laws of 1971 ex. sess. and RCW 82.24.020 are each amended to read as follows:

There is levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, *possession* or distribution of all cigarettes, in an

amount equal to the rate of six and one-half mills per cigarette. *For purposes of this section, and for purposes of RCW 28.47.440 and 73.32.130, "possession" shall mean both (1) physical possession by the purchaser and, (2) when cigarettes are being transported to or held for the purchaser or his designee by a person other than the purchaser, constructive possession by the purchaser or his designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.*

Sec. 4. Section 82.24.080, chapter 15, Laws of 1961 and RCW 82.24.080 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all of the articles taxed herein, sold, used, consumed, handled, *possessed,* or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, *possesses (either physically or constructively, in accordance with RCW 82.24.020)* or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles herein taxed is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, *possessed,* or distributed in this state.

It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event occurring within this state: PROVIDED, HOWEVER, That failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

Sec. 5. Section 82.24.130, chapter 15, Laws of 1961 and RCW 82.24.130 are each amended to read as follows:

Subject to the provisions of section 6 of this 1972 amendatory act, any articles taxed herein found at any point within this state, which articles shall be held, owned [,] *or* possessed [, or in the control of any person for a period of time longer than the time necessary to affix the stamps]

by any person, and not having the stamps affixed to the package or containers are hereby declared to be contraband goods, and may be seized by the [commission] *department of revenue,* or its duly authorized agent, or by a peace officer of the state, when directed by the [commission] *department of revenue* so to do, without a warrant, and said goods shall be offered by the [commission] *department of revenue* for sale at public auction to the highest bidder after due advertisement, but the [commission] *department of revenue* before delivering any of the goods so seized shall require the person, to whom such articles are sold, to affix the proper amount of stamps. The proceeds of sale of any goods sold hereunder shall be paid to the [commission] *department of revenue.*

The cost of seizure and sale shall be paid out of the proceeds derived from the sale before making remittance.

Any vending machine and any vehicle, not a common carrier, which may be used for the purpose of violating the provisions of this chapter shall likewise be subject to seizure and sale in the same manner.

Notwithstanding the foregoing provisions of this section, articles taxed herein which are in the possession of a wholesaler or retailer, licensed by the department, pursuant to the provisions of chapter 19.91 RCW for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

New Section. *Sec. 6.* There is added to chapter 15, Laws of 1961 and to chapter 82.24 RCW a new section to read as follows:

Every person who shall transport cigarettes not having the stamps affixed to the packages or containers, upon the public highways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes

so transported. If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. In the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not authorized by chapter 82.24 RCW to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" shall mean a wholesaler or retailer licensed pursuant to the provisions of chapter 19.91 RCW, the United States or an agency thereof, and any Indian tribal organization authorized [by the department] to possess unstamped cigarettes. V

New Section. *Sec.* 7. There is added to chapter 15, Laws of 1961 and to chapter 82.24 RCW a new section to read as follows:

Notwithstanding any other provisions of this chapter, a person may acquire and physically possess, if acquired and

possessed for purposes other than resale, four hundred or less cigarettes at any single time without incurring tax liability under this chapter, RCW 28A.47.440 and RCW 73.32.130.

New Section. *Sec. 8.* If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected.

New Section. *Sec. 9.* This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 29, 1972.

Passed the Senate February 19, 1972.

Approved by the Governor February 27, 1972 with the exception of one item in section 6 which is vetoed.

Filed in Office of Secretary of State February 28, 1972.

Note: Governor's explanation of partial veto is as follows:

Veto Message

". . . There has recently developed between the taxing authority of this state and certain Indian people a conflict, undesired by all parties, over the permissible scope of the state taxing authority as it relates to the sale of cigarettes in this state. More particularly, certain Indian people selling cigarettes on reservations have alleged that federal law relieves them of the state imposed duty to collect the cigarette excise tax upon sales to non-Indians. These allegations have been acted upon and the matter is presently in litigation.

This bill is an attempt to eliminate this controversy by interposing the authority of the state at points removed

from the reservations. To achieve this result the bill provides that the tax is imposed upon the first taxable event occurring in this state (section 4) and denominates as contraband any untaxed cigarettes which are not consigned to, or in the possession of, a person authorized to possess untaxed cigarettes (sections 5 and 6). Included among persons authorized to possess untaxed cigarettes are '. . . any Indian tribal organization authorized by the department to possess unstamped cigarettes.' (Section 6.) In addition, Section 7 legitimatizes individual possession of two cartons or less of unstamped cigarettes if held for personal use, thus legitimatizing to that extent non-Indian purchases from Indian sellers who have not collected the tax otherwise due from such buyers.

Serious questions have been raised about the propriety of the above-quoted portion of section 6. On its face, it purports to render dependent upon department approval even those sales of cigarettes by Indians to Indians when they are occupying their own trust land over which the state has not assumed full jurisdiction. It is highly doubtful that the state possesses authority thus to regulate inter-Indian on-reservation trade taking place on trust land where the state has not assumed full jurisdiction pursuant to chapter 37.12 RCW. It is equally doubtful that the legislature wished to make the attempt and particularly so if this condition to sale is viewed as an attempt to require an additional license of federal Indian traders.

If reference is had to Laws 1969, 1st ex. sess., ch. 214, sec. 1, it will be noted that the state has already assumed authority to determine which tribes, if any, may obtain untaxed cigarettes. A reading of this 1969 act makes clear that the phrase 'authorized by the department' in House Bill 44 is not intended to constitute a new grant of authority. It is instead, merely an internal reference to the powers already assumed under Laws 1969, 1st ex. sess., ch. 214, sec. 1. As such it is at best surplusage. But at

worst it may be mistaken for a grant of authority to the department to regulate inter-Indian reservation sales. For this reason, I have vetoed the item 'by the department' in the last paragraph of section 6.

By taking this action the bill authorizes possession of unstamped cigarettes by '. . . any Indian tribal organization authorized to possess unstamped cigarettes.' As such, the bill in no way can be said to interfere with pending litigation in this area in which Indian sellers are claiming such authorization under federal law. The question of which tribes are so authorized, and the source of any such authority, is thus not answered by this bill. Whether Laws 1969, 1st ex. sess., ch. 214, sec. 1, effectively grant the department this authority, and if so, to what extent, is not answered. Through this veto, however, that issue is not raised in House Bill 44; House Bill 44 ceases to be construable as granting any such authority to the department, and those claiming the invalidity of such grant are referred directly to its source, i.e., Laws 1969, 1st ex. sess., ch. 214, sec. 1.

I think it especially important to make two observations about this legislation a part of this communication. First, this legislation does not attempt, as has been reported, to impose any state taxes on the reservation and it actually legitimatizes untaxed sales in limited quantities to non-Indian buyers by Indian sellers. Second, it is my opinion that the question of the proper source of any tribal authorization to possess unstamped cigarettes, as raised in this act, should be judicially determined.

With he exception of the one item referred to above, the remainder of House Bill 44 is approved."

COPY BOUND C

B-1

APPENDIX B

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

[illegible] 1965

February 28, 1972
(Date)

BE IT KNOWN, That Leonard Tonasket, trading under the name and firm of Stozie Shop, is (are) hereby

LICENSED

to conduct a Commercial Business at East Omak, within the Colville Reservation, Okanogan County, WA, for a term of 10 years from February 28, 1972, and is (are) authorized to employ two (2) persons of his choice.

In consideration of the granting of this license, and by the acceptance thereof, the said licensee (or licensees) expressly warrants that all applicable Federal, State, and Tribal laws and regulations will be fully complied with in all respects, and that authorized license fees, charges, etc., will be paid; and failure so to do, he (or they) shall be subject to the penalty of the forfeiture of this license and such further action as the law and facts may justify; and the licensee (or licensees) waives all claim against the Government for loss or damage which may result from any cause whatever during the term of this license or his (or their) presence on the reservation in pursuance thereof.

This license is revocable at any time in the discretion of the Commissioner of Indian Affairs or his authorized representative for any cause deemed sufficient by him.

W. Sherwood Broadhead
(Superintendent – Agency)

(Strike out inapplicable words)

89349

OSE IN CENTER

B-2

COLVILLE TRIBAL TOBACCO OUTLET LICENSE

The Colville Business Council of the Colville Confederated Tribes of the Colville Reservation, Washington, hereby licenses Leonard Tonasket to operate Tobacco Outlet No. 1 on behalf of the Colville Confederated Tribes, pursuant to Colville Tobacco Ordinance, Resolution 1972--125 for a one-year period on the following-described premises:

"Stogie Shop" located on Allottment 8-700, East Omak, Washington

All tobacco products on the above-described premises are the federally-restricted property of the Colville Confederated Tribes and may not be removed from the premises except in the course of ordinary sale without the express permission of the Colville Business Council.

DATED May 25, 1972

COLVILLE BUSINESS COUNCIL

By: Mel Tonasket
Chairman

APPENDIX C

IN REPLY REFER TO:

Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

AUG 4 1972

Mr. Robert L. Pirtle
Ziontz, Pirtle & Morisset
Attorneys at Law
3101 Seattle-First National Bank Building
Seattle, Washington 98104

Dear Mr. Pirtle:

There are twenty-four federally recognized Indian Tribes in the State of Washington. Of these twenty-four tribes, twenty-one have formal organizational documents that have been recognized or approved by the Secretary of the Interior or the Commissioner of Indian Affairs. Of the twenty-one formally organized tribes, four have substantial income. Because of their historical approach to government, three of these four tribes pay out large portions of their income in dividends to their membership. The remaining eighteen tribes have insufficient income to finance governmental operations.

The daily pressures on tribal governments for economical development and social programs make it difficult for them to adequately finance normal governmental activities and responsibilities in all areas.

While tribes possess the inherent right to tax to finance governmental operations, economics of reservation areas have been a strong deterrent to that approach. Increasing pressures for reservation development programs and unwarrented encroachments by state and local governments on tribal prerogatives have resulted in complete reanalysis of governmental responsibilities by tribal governing bodies.

In the last seven years, ten tribes have begun to exercise taxing authorities in order to more adequately meet the needs of their governmental operations. Their more recent activities in this regard are in the field of taxing tobacco products.

It is the opinion of this office that all these tribes must move more fully into the area of taxation consistent with tribal prerogatives if they are to be able to adequately develop tribal governments to the extent necessary to meet the growing demands in the Indian field.

Sincerely yours,

Area Director

Enclosure